

THE YELLOW DOG CONTRACT

BY

JOEL I. SEIDMAN

A DISSERTATION

Submitted to the Board of University Studies of the Johns
Hopkins University in Conformity with the Requirements
for the Degree of Doctor of Philosophy

1932

Yer 50 no 4.

BALTIMORE

1932

THE YELLOW DOG CONTRACT



Digitized by the Internet Archive
in 2026

THE YELLOW DOG CONTRACT

BY

JOEL I. SEIDMAN

A DISSERTATION

Submitted to the Board of University Studies of the Johns
Hopkins University in Conformity with the Requirements
for the Degree of Doctor of Philosophy
1932

BALTIMORE

1932

COPYRIGHT 1932 BY
THE JOHNS HOPKINS PRESS



PRINTED IN THE UNITED STATES OF AMERICA
BY THE J. H. FURST COMPANY, BALTIMORE, MARYLAND

TO MY FATHER AND MOTHER

PREFACE

This study is the result of investigations carried on by the author while a member of the Economic Seminary of the Johns Hopkins University. The collection of trade union publications in the library of the Johns Hopkins University was the chief source of information, and considerable use was made of legal reports and publications as well. The material obtained from these sources was supplemented by personal interviews with trade union officials, and by field investigations in the West Virginia mining area and the Philadelphia hosiery district.

The author wishes to express his appreciation to Professor J. H. Hollander, Professor G. E. Barnett, and Associate Professor W. O. Weyforth for assistance received at every stage of the inquiry. He wishes also to thank the editors of the *Quarterly Journal of Economics* for permission to republish material that first appeared in the columns of that magazine. The field investigations undertaken were made possible by a grant from the Lessing Rosenthal Fund for Economic Research.

J. I. S.

CONTENTS

	PAGE
Chapter I. The Development of the Yellow Dog Contract	11
Chapter II. Uses of the Contract.....	39
Chapter III. Provisions in the Contract.....	56
Chapter IV. The Effect of the Contract.....	76
Appendix	87
Index	93

THE YELLOW DOG CONTRACT

CHAPTER I

THE DEVELOPMENT OF THE YELLOW DOG CONTRACT

The story of the yellow dog contract is one of the most absorbing in the entire sphere of labor economics. The controversy that has raged about it in the public press attests its importance, and its colorful designation affords a clue to the bitterness of feeling that it has aroused. Ever since the development of industry brought with it an alignment into employers and employees, a ceaseless struggle has been waged between these two groups over the division of the joint produce of their efforts. The rate of wages, the hours of labor, and the conditions of work in effect at any given time represent the point of equilibrium between these two vast contending forces. The strike and the lockout, the boycott and the blacklist, are but a few of the weapons devised by either capital or labor to aid it in this struggle. In their efforts to keep out the union, employers have resorted most often to the discharge of union leaders and sympathizers and the blacklist of strikers. More recently the company union has come into prominence. The latest weapon of the employers to achieve prominence, and one of the most effective ever used by them, is the yellow dog contract.

The yellow dog contract is a promise, made by workers as a condition of employment, not to belong to a union during the period of their employment, or not to engage in certain specified activities, such as collective bargaining or striking, without which the formal right to belong to a union is wholly valueless. From an economic point of view the yellow dog contract is a form of pressure which differs but little from such activities as the discharge of union sympathizers. It is the legal effect of the contract that has given it its importance,

and made it the highly effective and much feared weapon that it is.

The policy of employing only those workmen who agree not to participate in union activities might easily suggest itself independently to many employers troubled by the growth of labor organizations. It is not surprising, therefore, that individual agreements intended to prevent the organization of labor appeared first in England, the country in which the modern form of labor organization first arose.

The first unions appeared in the early part of the eighteenth century, and increased steadily in numbers as the century progressed. The employers met this new menace by appeals to Parliament to prohibit combinations in their industries, with the result that acts of this nature rapidly increased in number.¹ Finally in 1799² and 1800³ by the passing of general laws against all combinations, every trade union was rendered an illegal organization. Though the laws were on their face impartial in that they prohibited combinations of either employers or workmen, in practice they affected the former very much less, for the growth of the business unit had made a single employer in himself equivalent to a very large combination of laborers. In spite of the law, trade unions arose and strikes, though illegal, were frequently undertaken. Under these circumstances it was not unusual for employers to defeat a strike by prosecuting the leaders for conspiracy.⁴ It was not until 1824 that the Combination Laws were repealed and trade societies legalized.⁵ The following year the rights of collective bargaining and of striking were expressly established.⁶

With prosecution for conspiracy impossible, new weapons were devised to take its place. One of these new devices,

¹ Sidney and Beatrice Webb, *The History of Trade Unionism*, p. 21. (Page references are to the 1902 edition.)

² 39 Geo. III, c. 81.

³ 39 and 40 Geo. III, c. 60.

⁴ Webb, pp. 69 ff.

⁵ 5 Geo. IV, c. 95. Bland, Brown, and Tawney, *English Economic History, Select Documents*, pp. 633-635.

⁶ 6 Geo. IV, c. 129.

closely resembling the modern yellow dog contract, first achieved prominence in the Liverpool building trades dispute in 1833.

The several branches of the building trade in Liverpool simultaneously sent in identical claims for a uniform rate of wages for each class of operatives, a limitation of apprentices, the prohibition of machinery and piecework, and other requirements special to each branch of the trade. These demands were communicated to the employers in letters couched in dictatorial and even insulting terms, and were coupled with a claim to be paid wages for any time they might lose by striking to enforce their orders. . . .

This sort of language brought the employers of all classes into line. At a meeting held in June, 1833, they decided not only to refuse all the men's demands, but to make a deliberate attempt to extinguish the Union. For this purpose they publicly declared that henceforth no man need apply for work unless he was prepared to sign a formal renunciation of the Trades Union and all its works. The insistence on this formal renunciation, henceforth to be famous in Trade Union records as the 'presentation of the document,' exasperated the Builders' Union. The Liverpool demands were repeated in Manchester, where the employers adopted the same tactics as at Liverpool.⁷

Throughout the years 1833 and 1834, a period of angry unrest and bitter strikes, the "document" was everywhere in evidence. It was used with telling effect against the Leeds clothiers, and after resistance had proved futile the men abandoned their union.⁸ All the London building trades employers, including the heads of government departments, locked out their employees in July, 1834, and presented the hated "document" for signature; it was only after a desperate four months' struggle that the "document" was withdrawn and the men returned to work.⁹ During this period the Grand National Consolidated Trades Union sprang into existence, grew like a huge mushroom into a federation of half a million members, and then quickly collapsed. In many places, as at Leicester, the mere joining of the Grand National by the men led to the presentation of the "document" by the employers, and the dismissal of all who refused to sign.¹⁰ "The great association of half a million members had been completely routed by the employers' vigorous presentation of the 'document.'"¹¹

⁷ Webb, p. 115.

⁸ *Ibid.*, p. 136.

⁹ *Ibid.*, p. 135.

¹⁰ *Ibid.*, p. 122.

¹¹ *Ibid.*, p. 137.

Most often the "document" differed from the yellow dog contract proper in that it merely bound the employee to desert any union of which he was a member and said nothing, at least in express terms, as to his right to rejoin at some time in the future. Occasionally, however, the "document" referred expressly to the future as well as to the present; a Liverpool contractor in 1837, for example, forced his employees to promise not to join any present or future society without his consent.¹² In 1845 and 1846, after the formation of the National Association of United Trades for the Protection of Labour, the "document" reappeared in a slightly different form. No objection was now made to local unions, the objects of attack being national unions of particular trades, and general unions of all trades.¹³

In 1852 the turning point in the history of the individual, anti-union agreement was reached in England. In that year, following a desperate three months' struggle that involved every important engineering establishment in London and Lancashire, most of the men were forced to sign the "document." Instead of keeping their promises by abandoning their union, as the workmen had always done in the past, the engineers kept up their union membership, their leaders urging that since they had had no power of choice they had not entered upon a valid contract.¹⁴ In 1859, in a strike and lock-out of the London building trades involving twenty-four thousand men, the "document" was again presented, but the men won the right to return to work without signing it. From this time on little is heard of the individual, anti-union promise in England, for there was no advantage in forcing employees to sign instruments which they no longer observed. Of course they could have been dismissed for violating the terms of the document, but they could have been dismissed for union membership in the absence of any agreement whatever.

It was strange that no English employer thought of court action in connection with the "document." Until 1824, as we have seen, mere membership in a labor organization had

¹² *Ibid.*, p. 149.

¹³ *Ibid.*, p. 175.

¹⁴ *Ibid.*, pp. 196-197.

been a criminal offense, and prosecutions for conspiracy were by no means uncommon. Even after labor organizations as such had been legalized, workmen were quite often prosecuted upon various other grounds, such as intimidation, picketing, leaving work unfinished, and administering oaths.¹⁵ The case of *Lumley v. Gye*,¹⁶ which held it a tortious act to maliciously procure a breach of a contract of employment, seemed to point to a new assault upon labor, based upon the sacredness of the "document" as a contractual relation. The labor injunction never obtained a firm foothold in England, however, and it remained for American courts to extend the doctrine of *Lumley v. Gye* to cover anti-union promises of employees.

It is to the United States that we now turn our attention. The labor movement developed later here than in England, the energies of the populace until a much later date being devoted primarily to agriculture. In the early years of the nineteenth century the shoemakers, the only workmen who formed local unions of any strength, were in six cases prosecuted for criminal conspiracy.¹⁷ These prosecutions are important for our purpose as marking the first efforts of American employers to secure the aid of the courts and the law in their struggles with their employees. In the decade of the thirties the first real labor movement arose in this country, only to be crushed by the panic of 1837. During its brief period of activity the blacklist was frequently used against it, and there were several instances, as in the case of the Boston shipowners in 1832¹⁸ and the New York master tailors and leather dealers in 1836,¹⁹ in which the employers publicly announced that they would not employ any men who belonged to the organizations. There is no record, however, of any employees being made to promise not to join any union in the future.

¹⁵ *Ibid.*, pp. 127-128.

¹⁶ 2 El. and Bl. 216. Queen's Bench, 1853.

¹⁷ John R. Commons, etc., *History of Labour in the United States*, I, 138.

¹⁸ *Ibid.*, I, 311.

¹⁹ *Ibid.*, I, 403.

For a dozen years following the panic of 1837, the attention of the American labor movement was centered upon humanitarian and utopian schemes, and it was not until the fifties that trade unionism again made progress. The decade that followed the Civil War was characterized by labor unrest and agitation, culminating in the violent disturbances of 1877. It was during this period that the individual, non-union agreement made its appearance in this country. In some instances the men were merely required to renounce whatever union membership they then maintained, whereas in other cases they were forced to give the true yellow dog pledge to belong to no union during the period of their employment.

One of the first known instances of the use of the individual, anti-union pledge in this country was by the Western Union Telegraph Company. In 1870, following an unsuccessful strike, the operators employed by this company were forced to sign oaths not to reaffiliate with any union.²⁰ In the same year thirty-one shoe manufacturers in Philadelphia combined to lock out three thousand workmen in an effort to force them to sign agreements abandoning the Knights of St. Crispin.²¹ The effort failed, however, and the Crispins were able to maintain their organization. In 1872 the sugar refining firm of Havemeyers and Elder of Brooklyn, New York, required the coopers in their employ to renounce the union. The following year Stearns, Hill and Company, of Erie, Pennsylvania required their machinists to sign an application for employment in which they pledged themselves under penalty of a forfeit of pay not to join any union.²² It is interesting to note that this promise was referred to as a "document," which indicates that the English experience may have been known in this country. In 1874 certain cooperative firms in New York City required each employee to

²⁰ Testimony of B. Frank Shrimpton before United States Commission on Industrial Relations. *The Commercial Telegraphers' Journal*, May, 1915, p. 286.

²¹ Don D. Lescohier, *The Knights of St. Crispin*, pp. 42-43.

²² *Iron Molders' International Journal for the Month Ending July 31, 1873*, p. 47.

swear on the Bible indorsed by his church that he would not thereafter be connected with the union.²³ The following year in Fall River, Massachusetts, at the close of the great textile strike and lockout known as "The Great Vacation," in which 15,000 persons were involved, the operatives had to sign agreements providing that no employee should belong to a union in the future, and that only one out of eight could give notice to leave work at the same time.²⁴ The fact that this agreement was referred to as the "Infamous Document" strengthens the belief that American employers in their resort to individual contracts were consciously following English precedents. This anti-union pledge was also called an iron-clad document, and from this time until the close of the century "iron-clad" was the customary name for the non-union promise. The term "iron-clad," like "document" in England, was applied both to the agreement to abandon the union and to the promise not to become a member in the future. In 1877 the Knights of St. Crispin defeated an attempt of the manufacturers of Lynn to impose an iron-clad upon them.²⁵

In the decade of the eighties the labor movement forced itself into the front rank of the powerful influences that helped to mould the life of the country. The Knights of Labor, its membership suddenly increasing to almost three quarters of a million, proved on more than one occasion that it could grapple on equal terms with the most powerful industrialists of the day. The iron-clad now became a common weapon of the employers, more and more resorted to by the masters, and everywhere hated by the men. The employers using it included the Chicago packers²⁶ and the Philadelphia and Reading Railroad Company.²⁷ Cigarmakers in Cin-

²³ Ibid., Month Ending May 31, 1874, p. 357.

²⁴ Robert Howard, "Progress in the Textile Trades," in *The Labor Movement: The Problem of To-day*, pp. 223-225.

²⁵ Frank K. Foster, "Shoemakers in the Movement," in *ibid.*, p. 201.

²⁶ George E. McNeill, "Progress of the Movement from 1861 to 1886," in *ibid.*, p. 168.

²⁷ *Platt v. Philadelphia and Reading Railroad Company*, 65 Fed. 660 (1894). This case, it is interesting to note, was the first in

cinnati,²⁸ miners in West Virginia,²⁹ molders in St. Louis³⁰ and in Albany,³¹ and crockery workers in Ohio³² were among those forced to sign the iron-clad.

During the last decade of the nineteenth century and the opening years of the twentieth, the individual, anti-union promise declined in importance as an instrument in labor warfare. Its novelty had worn off, workmen no longer felt themselves morally bound to live up to it, and union organizers, of course, wholly disregarded it. Nevertheless it was used during the nineties by a few employers, including a Pittsburgh iron company,³³ a Pennsylvania glass manufacturer,³⁴ coal companies in Missouri³⁵ and Tennessee,³⁶ a group of ladies' garment manufacturers in New York,³⁷ and a harness making establishment in Indiana.³⁸ A most interesting case occurred in 1899 in Idaho, where martial law was declared following a violent labor disturbance, and miners were required by the military authorities to sign anti-union pledges before they could be employed in any of the mines in the district.³⁹ It is interesting to note that the injunction, of vital importance, as we shall see, in the

which individual, anti-union contracts were involved. Receivers for the railroad announced their intention to discharge all employees who belonged to the Brotherhood of Railroad Trainmen, in accordance with a policy followed by the Company since 1887 of employing only those men who agreed not to join any union. Certain employees asked the court to enjoin the receivers from carrying out their intention, but this the court refused to do, holding that both such action and the use of such contracts were legal.

²⁸ Iron Molders' Journal for the Month Ending February 29, 1880, p. 6.

²⁹ Journal of United Labor, June, 1883, pp. 502-503.

³⁰ Iron Molders' Journal for the Month Ending August 31, 1881, p. 3.

³¹ Report of the Executive Board of the Knights of Labor, 1884, p. 653.

³² Ibid., 1887, pp. 1435-1436.

³³ Iron Molders' Journal, November, 1893, p. 6.

³⁴ Flaccus v. Smith, 48 Atl. 894 (Pa., 1901).

³⁵ United Mine Workers' Journal, June 14, 1894, p. 3.

³⁶ Ibid., August 22, 1895, p. 2.

³⁷ Louis Levine, The Women's Garment Workers, p. 97.

³⁸ Leather Workers' Journal, November, 1899, p. 33.

³⁹ Journal of the Knights of Labor, August, 1899, p. 1, and March, 1900, p. 1.

history of the yellow dog contract, first achieved prominence in labor disputes during this period. As early as 1879 there are evidences of its use in industrial disputes, but it was not until the American Railway Union strike of 1894 that it proved itself a weapon of tremendous power in the labor struggle.⁴⁰

In the early years of the present century the individual, anti-union promise was resorted to frequently in coal mining and in the metal trades. In the coal industry there were instances of its use in West Virginia,⁴¹ Utah,⁴² Tennessee,⁴³ and Kentucky.⁴⁴ Its widespread use in the metal trades was largely attributable to the influence of two employers' organizations, the National Metal Trades Association and the National Founders' Association. The contracts introduced in foundries and pattern shops closely resembled each other, and as a rule bound the employee not to strike nor to unite with other employees in a concerted demand relating to wages or hours. It was not membership in a union that was usually prohibited, but participation in those essential activities without which membership is valueless. Contracts of this nature were used by the Moline Plow Company in 1901,⁴⁵ a Sackville, Canada foundry in 1902,⁴⁶ a number of Moline, Illinois foundries and jobbing shops in 1907,⁴⁷ and a Columbus, Indiana pattern shop in 1908.⁴⁸ As during the preceding periods, the contract also made its appearance in a number of other industries, the largest organizations using it being the Postal Telegraph-Cable Company⁴⁹ and the Pittsburg Steamship Company, a subsidiary of the United States Steel

⁴⁰ For the injunction see Record on Appeal of 158 U. S. 564. For the subsequent proceedings in contempt see *United States v. Debs*, 64 Fed. 724 (N. D. Ill., 1894) and *In re Debs*, Petitioner, 158 U. S. 564 (1895).

⁴¹ *Hitchman Coal and Coke Company v. Mitchell*, 245 U. S. 229 (1917).

⁴² *United Mine Workers' Journal*, March 21, 1901, p. 2.

⁴³ *Ibid.*, April 30, 1903, p. 1.

⁴⁴ *Ibid.*, August 8, 1907, p. 7.

⁴⁵ *Pattern Makers' Journal*, August, 1901, pp. 5-6.

⁴⁶ *Iron Molders' Journal*, April, 1902, p. 219.

⁴⁷ *Ibid.*, February, 1907, p. 124.

⁴⁸ *Pattern Makers' Journal*, January, 1908, pp. 1-2.

⁴⁹ *The Electrical Worker*, December, 1907, p. 24.

Corporation.⁵⁰ An unusually interesting use of the contract occurred in Indianapolis in 1904, when the Industrial Independent, a paper said to be the private organ of D. M. Parry, established an employment bureau on every application of which appeared the promise not to join a union.⁵¹

In 1910 the International United Brotherhood of Leather Workers on Horse Goods, following an unsuccessful conference with the National Saddlery Manufacturers' Association, called a national strike in the saddlery industry for the eight hour day. The strike proved a failure, and a large number of the employers required verbal or written promises to abandon and remain out of the organization as a condition of reemployment.⁵² In the same year the employers of Aberdeen, South Dakota banded themselves together in a Business Men's League and adopted a model anti-union contract to be enforced by all.⁵³ In the following year the non-union promise appeared even in the government service, the railway mail clerks in San Francisco being forced to sign the pledge, "We will not join any brotherhood or labor union while in this service."⁵⁴ Another instance of the use of the contract by a Canadian employer occurred about this time in the case of the Great West Saddlery Company of Winnipeg and Calgary.⁵⁵ During the four or five years preceding our entry into the war two industries in particular, glass manufacturing and street railways, made frequent use of the individual, anti-union promise, the employers being quick to adopt a device used successfully by one in their own line of business. The Eagle Glass Company of West Virginia had scarcely called attention to its contracts by filing a suit to enforce them⁵⁶ when the Federal Glass Company of Ohio⁵⁷ and the

⁵⁰ International Molders' Journal, September, 1908, p. 640.

⁵¹ Coopers' International Journal, December, 1904, p. 670.

⁵² Leather Workers' Journal, June, 1910, pp. 510-511; October, 1910, pp. 60-61; August, 1912, pp. 459-460.

⁵³ Bricklayer, Mason and Plasterer, April, 1910, pp. 75-76.

⁵⁴ International Molders' Journal, May, 1911, p. 353.

⁵⁵ Leather Workers' Journal, January, 1912, pp. 176-177.

⁵⁶ Eagle Glass and Manufacturing Co. v. Rowe, 245 U. S. 275 (1917).

⁵⁷ Circular, American Flint Glass Workers' Union, October 1, 1913, p. 1.

Macbeth-Evans Glass Company of Pennsylvania, Indiana, and Ohio⁵⁸ followed suit. In the street railway industry the contract, there known as a "master and servant" agreement, did not always prevent the joining of a union, though it accomplished the same result by prohibiting strikes, collective bargaining, and other essential union activities. The Indianapolis⁵⁹ and Washington⁶⁰ "master and servant" agreements were the most widely known in the industry.

It was during this period that the Commission on Industrial Relations had been investigating labor relations. Created by Congress in 1912 to make a comprehensive survey of industrial relations, it embodied in its report an emphatic disapproval of all efforts on the part of employers to prevent the free organization of their employees. The report of the research director, signed by four of the nine commissioners, contained the following recommendations:

1. Incorporation among the rights guaranteed by the Constitution of the unlimited right of individuals to form associations, not for the sake of profit but for the advancement of their individual and collective interests.

2. Enactment of statutes specifically protecting this right and prohibiting the discharge of any person because of his membership in a labor organization.

The commission further recommended that the refusal to permit employees to become members of labor organizations be considered unfair competition, and that the employers guilty of such refusal be prosecuted by the Department of Labor before the Federal Trade Commission.⁶¹

As a matter of fact attempts by law to secure the right of employees to organize had already been made and had proved failures. When the use of individual, anti-union contracts first attained considerable proportions labor went to the legislatures for a remedy and, beginning with New York in 1887,

⁵⁸ Ibid., February 24, 1914, pp. 3-4.

⁵⁹ Motorman and Conductor, December, 1916, p. 15. The Indianapolis "master and servant" agreement gave rise to a federal injunction, from which an important contempt case resulted. *Armstrong v. United States*, 18 Fed. (2nd) 371 (C. C. A. 7th, 1927).

⁶⁰ Motorman and Conductor, April, 1917, p. 11.

⁶¹ Report of Commission on Industrial Relations, I, 67-68.

sixteen states⁶² wrote on their statute books declarations making it a criminal act to force employees to agree not to join unions. The Congress of the United States incorporated in the Erdman Act of 1898⁶³ a similar provision relating to carriers engaged in interstate commerce. This act, the first to receive the attention of the federal courts, provided in the tenth section

That any employers subject to the provisions of this act . . . who shall require any employee . . . to enter into an agreement, either written or verbal, not to become or remain a member of any labor corporation, association, or organization; or shall threaten any employee with loss of employment, or shall unjustly discriminate against any employee because of his membership . . . is hereby declared to be guilty of a misdemeanor, and . . . shall be punished for each offense by a fine of not less than one hundred dollars and not more than one thousand dollars.

An official of the Louisville and Nashville Railroad Company, an interstate carrier subject to the provisions of the act, discharged an employee because of his membership in a labor organization. Action was brought against the official under the provisions of the Erdman Act, and the defense challenged the constitutionality of the act.

The case, known as *Adair v. United States*, was fought through the federal courts and was finally decided in 1908 by the United States Supreme Court.⁶⁴ The majority of the court held that the provision relating to discharge, since it would compel an employer to accept or retain the personal services of another against his will, was a violation of the Fifth Amendment to the Constitution, which declares that no person shall be deprived of liberty or property without due process of law. The court was careful, however, to restrict the decision to the provision relating to discharge, and to express no opinion as to the remainder of the law. The section of the Erdman Act making it criminal to force em-

⁶² These states were California, Colorado, Connecticut, Idaho, Indiana, Kansas, Massachusetts, Minnesota, Missouri, Nevada, New Hampshire, New Jersey, New York, Oklahoma, Pennsylvania, and Wisconsin. Porto Rico also passed such a law.

⁶³ 30 Stat. 424, c. 370.

⁶⁴ 208 U. S. 161, 28 Sup. Ct. 277.

ployees to sign anti-union agreements therefore remained unadjudicated.

Nevertheless the Adair case is of the greatest importance in the history of legislative attempts to outlaw the individual, anti-union promise, for when a case reached the federal courts under one of those laws, the Supreme Court held that in view of the Adair decision it had no choice but to declare such statutes likewise unconstitutional. The statute under which the case arose had been passed by Kansas in 1903, and provided, under penalty of fine or imprisonment

That it shall be unlawful . . . to coerce, require, demand, or influence any person or persons to enter into any agreement, either written or verbal, not to join or become or remain a member of any labor organization or association, as a condition of such person or persons securing employment, or continuing in . . . employment.⁶⁵

In 1911 a switchman employed by the St. Louis and San Francisco Railway Company was discharged because he refused to sign the following agreement:

Fort Scott, Kansas, —, 1911

Mr. T. B. Coppage, Superintendent Frisco Lines, Fort Scott:

We, the undersigned, have agreed to abide by your request, that is, to withdraw from the Switchmen's Union, while in the service of the Frisco Company.

(Signed) _____

Coppage was tried in a local court for violation of the statute, found guilty, and adjudged to pay a fine. The judgment, after having been affirmed by the Supreme Court of Kansas,⁶⁶ was reversed by the United States Supreme Court⁶⁷ in 1915 on the ground that the statute was in conflict with the Fourteenth Amendment to the Constitution, which declares that no state shall deprive any person of liberty or property without due process of law. In its decision, handed down on January 25, 1915, the court argued that the Adair case was

⁶⁵ Session Laws, 1903, c. 222.

⁶⁶ *State v. Coppage*, 87 Kansas 752, 125 Pac. 8 (1912).

⁶⁷ *Coppage v. Kansas*, 236 U. S. 1, 35 Sup. Ct. 240. This decision invalidated not only the Kansas act, but all the statutes listed in note 62 as well. Of those, however, the Missouri, New York, and Minnesota laws had already been declared unconstitutional by the respective state courts. *State v. Julow*, 129 Mo. 163, 31 S. W. 781 (1895); *People v. Marcus*, 185 N. Y. 257, 77 N. E. 1073 (1906); *State ex rel. Smith v. Daniels*, 118 Minn. 155, 136 N. W. 584 (1912).

indistinguishable in principle from the one then under consideration, for

Under constitutional freedom of contract, whatever either party has the right to treat as sufficient ground for terminating the employment, where there is no stipulation on the subject, he has the right to provide against by insisting that a stipulation respecting it shall be a *sine qua non* of the inception of the employment, or of its continuance if it be terminable at will.⁶⁸

In thus arguing that because an employee could be discharged for joining a union he could be forced to agree not to join one, the court used a process of reasoning that is open to considerable question. Since in an employment at will a man can be discharged upon any ground or upon no ground at all, it would follow that there are no limits to the promises that might be exacted from an employee. Yet this is obviously not so, as Justice Day pointed out in his dissenting opinion, for terms that were against public policy could not be included. No court would recognize an agreement that deprived a man of his life or freedom, or of his right to vote or to resort to the courts for redress of grievances.

From an economic point of view the effect of the Adair and Coppage decisions was negligible. Employers were now free to resort to anti-union contracts without hindrance from laws that had never been observed, and employees could now be forced to sign agreements that they violated with impunity, and that union organizers wholly disregarded. The labor press commented little upon the Coppage case, and what comment was made was often with the intention of minimizing its importance. The Motorman and Conductor assured its readers that trade unionism was not affected by the overthrow of the law. "Employers have never observed it," the editor asserted. "Never has there been a local union of a labor organization established under the protection of such a law . . . All such laws . . . have rested as dead letters upon the statute-books . . . [In Kansas] so little confidence in the law was had by this Association . . . that its protection was never sought."⁶⁹

⁶⁸ 236 U. S. 1, 13.

⁶⁹ The Motorman and Conductor, April, 1915, p. 9.

With our entrance into the World War came a new attitude toward organized labor. Whereas in times of peace an industrial dispute, except in vital industries like coal-mining, was purely a matter of concern between the parties immediately involved, now it was essential to the national safety that the volume of production be maintained at the highest possible level, and that the avenues of communication and transportation remain always open. The National War Labor Board, established in April, 1918, to insure the peaceful settlement of labor disputes for the duration of the war, had as one of its cardinal principles the free right of employees to organize if they so desired. In one of its early decisions the Board ordered the General Electric Company to discontinue the use of individual, non-union agreements in its Pittsfield, Massachusetts plant, declaring that "the practice of making individual contracts of the restrictive character in evidence before this board is prohibited." The Omaha and Council Bluffs Street Railway Company was likewise compelled to abandon the use of such contracts.⁷⁰ Moreover, the limited labor supply and the huge profits to be made in war industries made employers anxious to get men under any conditions, and in all likelihood there would have been but few attempts at obnoxious provisions even had the government not interfered. Enjoying recognition and prestige as never before, with its leaders high in the councils of the government, and with wages mounting and organizations growing, the labor movement seemed to be in its golden age.

Shortly before the establishment of the National War Labor Board, and almost unnoticed in the general confusion, the apparently secure position of the American labor movement had been undermined. As early as 1906 the Hitchman Coal and Coke Company, operating a mine in what is known as the Pan Handle District of West Virginia, had forced each of its employees to pledge that they would not join the miners' union while in the employ of the Hitchman Company. In spite of these contracts an organizer for the United

⁷⁰ For the decisions of the Board against individual, anti-union contracts see National War Labor Board Dockets 19, 154, 1049.

Mine Workers attempted to persuade the Hitchman employees to join the union, and the company asked for an injunction to restrain this interference with the existing contractual relationship. After ten years of litigation the case was finally decided by the United States Supreme Court on December 10, 1917, the injunction being issued as prayed.⁷¹ Since the English case of *Lumley v. Gye*⁷² in 1853 it had been actionable to persuade a party to an employment contract to break it, and it was this doctrine that the Supreme Court now extended to cover anti-union pledges of employees. For almost forty years American courts had been issuing injunctions in labor disputes; now, however, acts were prohibited that had not hitherto been challenged—acts, moreover, that were at the very basis of labor's attempts to organize.⁷³ It is interesting to speculate as to whether the decision would have been different had it been delayed four months. Since the case had been in the courts for ten years, the rights of the parties could not have been affected, as a matter of law, by the policies of the National War Labor Board; but since there were no precedents to follow, and since the non-union contract was outlawed, at least for the duration of the war, by the authority of the President, it would have been far more difficult, after the establishment of the Board, for the court to have handed down the decision it did.

Up to now the only effect of non-union promises had been psychological, the legal rights and the economic powers of the parties being unaffected by them. The employers had acted upon the theory that their workmen, being honest, would remain out of unions once they had promised not to join; or being ignorant, would not know that there were no legal penalties for joining; or being timid, would be afraid to take any action to which their employers were so vigorously

⁷¹ *Hitchman Coal and Coke Co. v. Mitchell*, 245 U. S. 229, 38 Sup. Ct. 65.

⁷² See above, p. 15.

⁷³ In the case of *Flaccus v. Smith*, 48 Atl. 894 (Pa., 1901), the Pennsylvania Supreme Court had enjoined interference with non-union contracts. This decision, however, did not attract any attention, and was in no way responsible for the subsequent development of the anti-union contract.

opposed. Formerly the only penalty for violation of the contract had been dismissal, but since the employment was almost invariably at will, the employer had the unlimited right to discharge at any time he saw fit to do so. Since he could exercise this right, if he so chose, whenever his employees joined a union, whether or not they had promised to remain non-union, it followed that the contract neither added to nor subtracted from the rights or obligations of either party. The Hitchman decision, however, transformed this ineffective psychological device into a powerful legal weapon. If injunctions to restrain third parties—and therefore union leaders and organizers—from interfering with anti-union promises will issue, then any attempt thereafter to organize the men becomes contempt of court.⁷⁴ Formerly the only penalty had been the dismissal of employees who joined the union at the invitation of the organizers; now in addition the organizers could be sent to jail.

It is strange that labor took so little notice of the decision at the time. Samuel Gompers, it is true, asserted in an editorial⁷⁵ that the decision was of greater significance to labor than any other court decision, and the editor of another labor journal called the decision one of the most detrimental to the rights of unions ever issued by the United States Supreme Court.⁷⁶ These were but lone voices, however, the overwhelming number of trade union publications entirely ignoring the decision or at any rate failing to perceive its true importance.

The appearance of the Hitchman decision was the signal

⁷⁴ A permanent injunction issued on the basis of anti-union promises remains in effect as long as the employer continues to use such contracts. In 1922, five years after the injunction was issued in the Hitchman case, organizers of the United Mine Workers appealed to the Hitchman employees to join the nation-wide strike of that year, with the result that contempt proceedings were begun against them on the basis of the 1917 injunction. The judge ordered a notice to be published in the union journal declaring that the Hitchman mine was not included in the strike order. Senate Hearings on Conditions in the Coal Fields of Pennsylvania, West Virginia, and Ohio (1928), pp. 2122-2133.

⁷⁵ *American Federationist*, March, 1918, p. 225.

⁷⁶ *The Railroad Trainman*, February, 1918, p. 146.

for a few employers to introduce similar contracts in their own plants, though the National War Labor Board, as has already been related, refused to countenance such tactics while this country was engaged in war. The Kennecott Copper Corporation of Kennecott, Alaska introduced individual contracts as soon as the Advance Opinions of the Supreme Court containing the Hitchman decision reached it.⁷⁷ In 1919, with the restraining influences of war time removed, employers were free to adopt whatever form of contract they could persuade or compel their workmen to sign. The Cincinnati branch of the National Metal Trades Association showed itself particularly interested in individual contracts,⁷⁸ and a series of labor disputes in that city resulted in the adoption of a number of anti-union agreements. The League for Industrial Rights, an employers' organization specializing in the law of industrial relations, was not slow to realize the value of individual agreements, and printed several forms which its members were urged to adopt. These sample agreements did not prohibit union membership, but attempted to settle disputes by arbitration, both parties promising not to engage in strikes, lockouts, or other kinds of unfriendly activity except as a last resort.⁷⁹ Most employers who perceived the value to them of individual agreements were not satisfied with such mild proposals as the League made, and instead flatly prohibited any form of organization among their employees. This aroused the anger of the League, which as early as July, 1920, counseled moderation, warning its members that "To tell a red-blooded citizen he can not join a union while society holds that unions are lawful and useful, but whets the desire to join and creates a spirit of sullen hostility."⁸⁰

From this time on the number of employers using individual, anti-union contracts steadily increased. The metal trades, coal mining, and transportation continued through

⁷⁷ United Mine Workers' Journal, May 30, 1918, pp. 24-25.

⁷⁸ 2 Law and Labor 14, 15 (1920).

⁷⁹ Law and Labor, April, 1919, pp. 15-16.

⁸⁰ 2 Law and Labor 166 (1920).

1920 and 1921 to provide the greatest number of the contracts, but new industries were continually being added to the list. The Oklahoma City building trades,⁸¹ bookbinders in Cincinnati,⁸² clothing workers in New York,⁸³ and printers in Boston⁸⁴ and Binghamton⁸⁵ furnish but a few examples of the new groups of workers forced to promise not to join unions. With the collapse of the war prosperity in 1921 the employing interests of the country launched a series of attacks upon the organized labor movement, in which the anti-union promise figured prominently. In January of that year the principle of the open shop was defined at the National Conference of State Manufacturers' Associations as follows: "That all law-abiding citizens have the right to work when they please, for whom they please, and on whatever terms are mutually agreed on between employee and employer and without interference or discrimination upon the part of others." One of the supporters of the resolution explained that he interpreted it to mean "That we will not employ an individual in any part of the plant that does not sign an individual contract in which it is expressed that he is not and will not become a member of a labor organization while in our employ."⁸⁶

The effort was widely made to identify the open shop movement with patriotism by calling it the "American Plan." A Kansas City printing company laid off its union employees, notifying them that they could return to work as American citizens but not as members of a union.⁸⁷ The term "American Plan," it should be added, was used in varying senses, sometimes to mean that union and non-union men would be employed without discrimination, sometimes to mean a closed non-union shop, and sometimes to mean a closed non-union

⁸¹ The Bridgemen's Magazine, August, 1920, pp. 413-414.

⁸² The International Bookbinder, February, 1921, p. 51.

⁸³ *Skolny v. Hillman*, 187 N. Y. Supp. 706 (1921); *Schwartz and Jaffee Inc. v. Hillman*, 189 N. Y. Supp. 21 (1921).

⁸⁴ *George H. Ellis Company v. McBride*, 3 Law and Labor 193 (Mass., 1921).

⁸⁵ *Vail-Ballou Press, Inc. v. Casey*, 212 N. Y. Supp. 113 (1925).

⁸⁶ American Labor Year Book, 1921-1922, p. 89.

⁸⁷ United Mine Workers' Journal, January 15, 1921, p. 6.

shop operating under individual, anti-union agreements. An employers' association in the printing industry issued to its members a bulletin containing this advice:

Having declared your plant an open shop, it is advisable to make this policy decisive and permanent by adopting the American Plan of employment to preclude all possibility of labor union interference in the future.

Under the American Plan the employer exercises his fundamental right of private contract, dealing with employees as individuals and declining to deal with them through the medium of any organization. To forestall the intervention of professional meddlers and to safeguard his undeniable right to run his own business as he sees fit, every employer should take the wise precaution to include in each individual employment contract a clause in which the person employed agrees that during the term of his employment he will not hold membership in any labor union.⁸⁸

It was in the coal industry in West Virginia that the individual, anti-union contract spread most rapidly. Engaged at that time in a desperate struggle against unionization, it was not surprising that West Virginia operators should adopt the device used with such success by their neighbor, the Hitchman company. Moreover, the isolated locations of the mining towns and the semi-feudalistic organization of the industry made it particularly easy to put such agreements into effect. When the Borderland Coal Company of Mingo County, West Virginia sought an injunction in September, 1921 to prevent interference with the contracts of their employees, it requested the same relief for sixty-two other companies operating in the same field. The widespread strike of 1922 caused a number of similar suits to be filed by other operators in that state, until a total of three hundred and sixteen companies had taken such action. These cases, twelve in number, were consolidated in 1923, and four years later a single injunction restrained the union from organizing any of the employees who had signed the contracts.⁸⁹

The coal industry of West Virginia contributed not only the greatest number of the contracts, but also the colorful

⁸⁸ Ibid., August 15, 1921, pp. 6-7.

⁸⁹ International Organization, *United Mine Workers of America v. Red Jacket Consolidated Coal & Coke Co.*, 18 Fed. (2nd) 839 (C. C. A. 4th, 1927), cert. den., 275 U. S. 536.

designation "yellow dog" by which the contract is now universally known. As early as 1902 this general term of contempt had been applied by labor to the obnoxious house leases used in the coal fields of that state,⁹⁰ which provided for eviction on short notice and often in addition gave the lessor—the employing coal company—the right to enter upon the premises at any time and remove persons objectionable to it. Since throughout the state the miner rented a house from the company at the same time that he secured a job, it often happened that the yellow dog lease and the anti-union contract were embodied in the same instrument. By 1921 the term was generally applied to the contract alone, and by the following year it had come into general use throughout all industries.⁹¹

It was 1921 before the labor movement realized how great a menace to it the yellow dog contract was. In the spring of that year leading articles⁹² and editorials in the labor press devoted to that subject are found for the first time. Labor editors could hardly find language adequate to express their condemnation of the contract. Typical was the comment of the editor of the *United Mine Workers' Journal*:

This agreement has been well named. It is yellow dog for sure. It reduces to the level of a yellow dog any man that signs it, for he signs away every right he possesses under the Constitution and laws of the land and makes himself the truckling, helpless slave of the employer.⁹³

The United States Coal Commission, which in 1922 and 1923 made a thorough study of labor relations in the coal industry, used language scarcely less bitter in its report. "A manager," it said, "who can mine coal only with the use of spies, intimidation, and forced contracts, which aim to destroy freedom of will of his workers, is not much of a manager

⁹⁰ *United Mine Workers' Journal*, July 3, 1902, p. 1.

⁹¹ In the West Virginia fields the connection with the lease still lingers, and there the miner is as likely to mean the lease as the contract when he says that he has signed a yellow dog.

⁹² See, for example, *The Commercial Telegraphers' Journal*, May-June, 1921, p. 211.

⁹³ *United Mine Workers' Journal*, March 1, 1921, p. 6.

and less of a man.”⁹⁴ The commission asserted that the yellow dog contract was a source of economic irritation,⁹⁵ and recommended that it be abolished.⁹⁶

By 1925 the contract had spread so widely that the labor movement had become thoroughly aroused to the danger involved in it. The Ohio State Federation of Labor determined to find out whether a bill could be drafted that would effectively curb the yellow dog contract and still avoid the pitfalls of unconstitutionality into which statutes like the Kansas act of 1903 had fallen.⁹⁷ A committee of leading law professors was formed⁹⁸ which decided, instead of making it a criminal act to adopt the contract, to merely make the contract void and unenforceable. The final draft of the bill was as follows:

Section 1. Every undertaking or promise hereafter made, whether written or oral, express or implied, constituting, or contained in, any contract or agreement of hiring or employment between any individual, firm, company, association, or corporation, and any employee or prospective employee of the same, whereby (a) either party to such contract or agreement undertakes or promises not to join, become, or remain, a member of any labor organization or of any organization of employers, or (b) either party to such contract or agreement undertakes or promises that he will withdraw from the employment relation in the event that he joins, becomes, remains, a member of any labor organization or of any organization of employers, is hereby declared to be contrary to public policy and wholly void.

⁹⁴ Report of United States Coal Commission, Part 3, p. 1333.

⁹⁵ *Ibid.*, Part 1, p. 179.

⁹⁶ *Ibid.*, Part 1, p. 156.

⁹⁷ See above, p. 23.

⁹⁸ The bill was actually drawn by Herman Oliphant of Johns Hopkins University and revised by Noel T. Dowling of Columbia. Others who assisted were Roscoe Pound and Francis B. Sayre of Harvard, Joseph P. Chamberlain of Columbia, and John B. Andrews of the American Association for Labor Legislation. As originally drawn by Professor Oliphant the bill provided (1) that no damages could be secured at law against one who breached such a contract, (2) that no injunction could be issued to restrain such a breach, (3) that no damages could be secured at law against one who induced the breach of such a contract, and (4) that no injunction could be issued to restrain the inducing of such a breach. The proposed fourth section was of course the important one, the bill being drafted in this form to increase its chances of being held constitutional. The leaders of the Ohio State Federation of Labor were not satisfied with this draft, insisting instead upon a declaration that individual anti-union promises were contrary to public policy and void.

The bill failed of passage in 1925, but its backers resolved to introduce it again and to persuade other state federations of labor to do the same. At the 1926 convention of the American Federation of Labor the Committee on Executive Council's Report denounced the contract as contrary to public policy and a challenge to American institutions. "The 'yellow dog' contract," it asserted, "is as fully destructive of human liberty as a condition of peonage."⁹⁹ In 1927 the Ohio State Federation of Labor again introduced its bill, and its president, John P. Frey, testified before the Judiciary Committee of the Ohio House of Representatives that he could give the names of more than fifty employers in the city of Cincinnati alone who then enforced the yellow dog contract.¹⁰⁰

It was at this time that the United States Circuit Court of Appeals of the Fourth Circuit handed down its decision in the Red Jacket case.¹⁰¹ Judge John J. Parker, who wrote the opinion, argued that he was bound by the Hitchman case to protect the contracts by injunction.¹⁰² By one stroke all the employees of three hundred and sixteen coal companies, comprising more than 40,000 miners in southern West Virginia, were thus insulated from union influence.¹⁰³ Small wonder that a few months later the president of the Pennsyl-

⁹⁹ Proceedings, Forty-Sixth Annual Convention of the American Federation of Labor, p. 340.

¹⁰⁰ Proceedings on the Public Hearing of Senate Bill No. 30 (Ohio, 1927), p. 57.

¹⁰¹ See above, p. 30.

¹⁰² There were, however, grounds upon which the Red Jacket case could have been distinguished from the Hitchman case. Two of the points of difference were that the Hitchman decision was based to a considerable extent upon the defendants' lack of good faith, and that in the Hitchman case the men had joined the union and continued working in violation of their contracts. In the American Steel Foundries case in 1921 Justice Taft, speaking of the Hitchman case, had said: "The unlawful and deceitful means used were quite enough to sustain the decision of the court without more." 257 U. S. 184, 211. Moreover the Clayton Act, which had been passed too late to be considered in the Hitchman case, was now in effect. It should be added, however, that the Supreme Court had in 1921 interpreted the Clayton Act in Duplex Printing Press Co. v. Deering, 254 U. S. 443, so as to add very little to labor's rights.

¹⁰³ Senate Hearings on Conditions in the Coal Fields of Pennsylvania, West Virginia, and Ohio, p. 408.

vania Federation of Labor could assert that "The 'yellow dog contract' and the injunction are the greatest dangers the American labor movement has ever faced . . . and unless organized labor offers intelligent opposition, then I fear that the trade-unions of this country are bound to suffer extinction."¹⁰⁴ This gloomy prophecy seemed close to fulfillment in the hosiery workers' union, whose representative told the 1929 convention of the American Federation of Labor that "the injunction and the 'yellow dog' contract are practically wiping our little organization off the map." Sixteen hosiery mills were listed as then using the contract, two of which had already secured injunctions, and four more of which had applications for them pending.¹⁰⁵

Since the Red Jacket decision was handed down there has been a strong reaction against the yellow dog contract, a reaction in which judges,¹⁰⁶ legislators, and the general public have come increasingly to share labor's opposition to anti-union promises. As early as 1927 the Court of Appeals of New York, in a case that squarely presented the Hitchman situation, had refused to enforce the contract,¹⁰⁷ and the following year this position was reaffirmed.¹⁰⁸ It is particularly

¹⁰⁴ International Molders' Journal, January, 1928, p. 18.

¹⁰⁵ Proceedings, Forty-ninth Annual Convention of the American Federation of Labor, pp. 340-341.

¹⁰⁶ For a vigorous judicial attack upon yellow dog contracts see Justice Maxey's dissenting opinion in *Kraemer Hosiery Company v. American Federation of Full-Fashioned Hosiery Workers*, 305 Pa. 206 (1931). "These essentially coercive anti-union contracts are socially wrong and legally indefensible," he wrote. "They are a vestige of economic bourbonism—a cult that is now outmoded." *Ibid.*, p. 237.

¹⁰⁷ *Exchange Bakery & Restaurant, Inc. v. Rifkin*, 245 N. Y. 260, 157 N. E. 130. The Court of Appeals took the position that the anti-union declaration was not a contract, but merely a promise based upon no consideration. This case was somewhat unusual in that the promise was not required until after work was begun, but in an employment at will that would probably not make any difference.

¹⁰⁸ *Interborough Rapid Transit Company v. Lavin*, 247 N. Y. 65, 159 N. E. 863. The New York rule seems to be that the anti-union contract will not be enforced, except perhaps where it is part of a contract of employment for a definite term. Even this latter point is in doubt, however, for no such case has as yet been presented for adjudication.

noteworthy that this result was reached at common law, without the aid of a statute. In 1929 the Ohio bill, as the bill declaring the yellow dog contract opposed to public policy and void has become known, was enacted in Wisconsin, with an added clause declaring unenforcible promises of farmers not to join cooperative associations. Two years later Arizona, Colorado, Ohio, and Oregon enacted the bill as originally drawn, and in 1932 it became law in the federal jurisdiction¹⁰⁹ as part of an anti-injunction measure. The Ohio provisions have also been introduced in a number of other states, in Indiana only the veto of the governor preventing its passage. Thus far the constitutionality of the bill has not been tested in any court, and the advance opinions that have been delivered have reached opposite results. In 1927 the Attorney-General of Ohio ruled that the bill was constitutional, whereas in 1930 in an advisory opinion the Supreme Judicial Court of Massachusetts held it to be unconstitutional,¹¹⁰ and the Attorney-General of Indiana reached a like conclusion.

Following this decision, the Interborough Rapid Transit Company introduced a contract which ostensibly ran for two years, but in which so many grounds for discharge were reserved that the lower court refused enforcement. This case, which was not taken to the Court of Appeals, nevertheless remains one of the most important yet fought, for it was the first in which the social and economic background of the yellow dog contract was thoroughly analyzed by the attorneys for labor. *Interborough Rapid Transit Company v. Green*, 227 N. Y. Supp. 258 (1928).

¹⁰⁹ In one sphere subject to federal control the yellow dog contract had already been eliminated. The federal Transportation Act of 1920, applying to interstate carriers, specifically provided for the right of employees to be represented through organizations of their own choice. In *Railway Employees' Department, A. F. of L. v. Nashville, Chattanooga & St. Louis Railway*, the United States Railroad Labor Board held it a violation of this law for an interstate carrier to make non-union membership a condition of employment. United States Railroad Labor Board, Decision No. 2305, March 26, 1924, 6 Law and Labor 127. The Railway Labor Act of 1926 made a similar provision, and though no case involving yellow dog contracts has yet arisen under it, the Supreme Court has held that an attempt to force employees to join a company union violated the act. *Texas and New Orleans Railroad Company v. Brotherhood of Railway and Steamship Clerks*, 281 U. S. 548 (1930). Under the rule of this decision it would seem that an attempt to force employees to sign yellow dog contracts would also constitute a violation of the act.

¹¹⁰ In *re* Opinion of the Justices, 171 N. E. 234.

The majority of the Senate Committee on the Judiciary, in reporting the federal bill adversely, expressed the belief that the anti-yellow dog feature of the bill, among others, was unconstitutional;¹¹¹ and President Hoover in signing the bill made public a letter from the Attorney-General raising similar constitutional doubts. It is therefore impossible to know the effect of this measure until it has been tested in the courts.

The reaction against the contract culminated in the spring of 1930 in the rejection by the Senate of the nomination of Judge Parker to the United States Supreme Court. Up to that time, indeed, the yellow dog contract had figured little in the daily press, and the general public was as yet largely unacquainted with the term. The storm of protest that swept over the country when the author of the Red Jacket opinion was named to the highest judicial body in the land showed public opinion almost unanimously opposed to the yellow dog contract. Senator after senator attacked Parker for having enforced the contract, and though Parker found many defenders, the contract found only one. Some of the staunchest advocates of Parker's elevation to the Supreme Court at great length asserted their opposition to the contract, arguing that as a lower court judge it was Parker's duty to follow the Supreme Court's decision in the Hitchman case. When the Senate on May 7, 1930, finally voted to reject Parker, it was in reality passing judgment, not upon him, but upon the yellow dog contract.¹¹²

This widespread condemnation of the contract is as yet only partially reflected in the law reports. It is still good law, in almost every state where the matter has been decided,

¹¹¹ S. Rept. No. 1060, 71 st Cong., 2nd sess., pp. 6-8.

¹¹² The vote upon Parker was yeas—39; nays—41; not voting—16. 72 Cong. Rec. 8487. Of the ten senators who spoke in favor of Parker, Waterman was the only one to defend the contract as legitimate. Fess declared that his sympathies were against the final decision, and Jones announced his willingness to vote for a bill that would change the law of the Red Jacket case. The other seven did not express their opinion of the contract, merely asserting that Parker in his decision followed the rule laid down by the Supreme Court in the Hitchman case.

that an injunction will issue to restrain interference by outsiders with the performance of a yellow dog contract. At least sixty such cases have arisen, and in all but a few, notably the Exchange Bakery and Interborough cases in New York, the injunction has been issued as prayed. It is interesting to note that there is no case on record in which enforcement has been sought against the workman who signed the contract, which again demonstrates what has already been pointed out, that the chief purpose is to make it easier to secure an injunction against the union. In several cases unions have attempted to use the Hitchman doctrine against employers, but thus far no such attempt has been successful.¹¹³

The status of the injunction as an instrument for the enforcement of the yellow dog contract is by no means settled. If the Supreme Court holds the 1932 federal anti-yellow dog contract law constitutional and therefore refuses to issue injunctions to enforce the contracts, in all probability the states will reach similar results, either by statute or at common law, and the yellow dog contract will become only of

¹¹³ The Shoe Workers' Protective Union incorporated into its constitution a provision prohibiting its members from signing individual, anti-union promises. Since this is in the nature of a contract between the union and each of its members, any attempt by an employer to get these men to sign yellow dog contracts would seem to be enjoined under the rule of the Hitchman decision. In one case the union asked for an injunction on this theory, but the court held that the employer did not force his employees to leave the union, but merely sought to establish an open shop. *Nolan v. Farmington Shoe-Manufacturing Company*, 25 Fed. (2nd) 906 (1928). For another case in which this provision figured see *New England Wood Heel Co. v. Nolan*, 167 N. E. 323 (Massachusetts, 1929). In *Lovinger & Schwartz Co. v. Joint Board*, 7 Law and Labor 120 (Ohio, 1925), the union asked for an injunction restraining an employer from entering into individual agreements with union members, all of whom had previously agreed not to make such contracts. The employer likewise asked for an injunction to protect its individual agreements from union interference. This the court refused to grant, holding these agreements to be in violation of the contracts between the employees and the union. On other grounds, however, the employer secured an injunction. In *International Stereotypers & Electrotypers Union, No. 31 v. Meyer*, 6 Law and Labor 244 (Ohio, 1923), the union sought to restrain a former member from working under a yellow dog contract in violation of a two year contract made with it. The court refused to decide the case on the ground that the contract had expired before judgment could be handed down.

historical interest. If, on the contrary, the Supreme Court holds the law unconstitutional, the spread of the contract in the future may be even greater than it has been in the past. In deciding this important question, which is certain to present itself in the near future, it is quite possible that the Court may be influenced by the force of public opinion as registered in the numerous attempts at legislative remedies, as well as in the senatorial opposition that the Parker nomination aroused.

CHAPTER II

USES OF THE CONTRACT

Since the individual, anti-union contract is a weapon of industrial warfare, it is usually resorted to at some crucial moment in the struggle between employer and employees. It frequently happens that an employer, alarmed by the growth of union sentiment in his plant, seizes upon the contract as a device to rid himself of the union before it grows too strong. In such instances the introduction of the contract often incenses the men and precipitates the conflict.

In 1900 a dispute arose at the plant of Mossberg and Granville of Providence, Rhode Island, as to overtime pay. The firm refused to recognize the International Association of Machinists, to which the men belonged, and endeavored to destroy the organization in their plant by insisting that each employee make affidavit that he was not a union member. Two of the men were discharged for refusing to make such an affidavit, whereupon the remaining union men went on strike.¹ Similarly, the Drayman's Association of San Francisco in 1901, in an effort to crush the Brotherhood of Teamsters and City Front Federation, locked out their employees, telling them that they could return to work when they renounced their union and agreed not to join another. Other unions struck in sympathy, and soon more than 22,000 men were out of work.² The Moore Drop Forging Company presented all its employees with yellow dog contracts on December 9, 1920. Two days later fifty-eight men who refused to sign were discharged, whereupon one hundred and twenty men who had signed went on strike.³

Sometimes the introduction of the contract quickly follows the organization of a union. About a week after the employ-

¹ Monthly Journal of the International Association of Machinists, June, 1900, pp. 307-308.

² Ibid., November, 1901, pp. 799-800.

³ Moore Drop Forging Co. v. McCarthy, 137 N. E. 919 (Massachusetts, 1923).

ees of the Alfrey Heading Mills of Jonesboro, Arkansas had been organized by A. C. Hughes of the Coopers' International Union, they were given yellow dog contracts to sign, and upon refusing, were locked out.⁴ The street railway employees of Bloomington, Illinois, organized on May 18, 1917, and were locked out on May 28, when they refused to sign "the notorious Indianapolis master and servant contract."⁵

Two months after organizers came to Springfield, Massachusetts to persuade machinists to join the union, the National Equipment Company adopted yellow dog contracts.⁶ The Dunbar Flint Glass Company of Dunbar, West Virginia introduced the individual contract system in 1927, through fear that union influence was increasing among the men.⁷ Two years later a union organizer discussed the possibility of an organizing campaign with some of the employees, and the following day those men, who had not signed the contract before, were forced to sign and discharged if they refused.⁸ The employees of the Millfay Manufacturing Company, a Buffalo, New York hosiery concern, angered in 1927 by the discharge of four union sympathizers, joined the union almost in a body, and to counteract this movement the company introduced yellow dog contracts.⁹ When the Amalgamated Clothing Workers entered upon a widespread campaign to organize the men's clothing industry of Philadelphia in 1929, a number of employers whose plants had been struck or threatened introduced yellow dog contracts.¹⁰

The contract has been frequently introduced during the progress of a strike. Such was the case in the Coeur D'Alene mining region of Idaho in 1899, when martial law was declared in an effort to end a violent strike, and a permit system of employment in the entire region inaugurated by

⁴ Coopers' International Journal, January, 1914, p. 24.

⁵ Motorman and Conductor, June, 1917, p. 13.

⁶ National Equipment Co. v. Donovan, Law and Labor, October, 1919, p. 9 (Massachusetts, 1919).

⁷ Circular, American Flint Glass Workers' Union, March 28, 1927, p. 2866.

⁸ Ibid., April 25, 1929, p. 3281.

⁹ The Textile Worker, January, 1928, p. 602.

¹⁰ 71 Cong. Rec. 3639 (1929).

the military authorities. In order to obtain a permit a miner had to declare that he had not participated in the riots, and "renounce and forever abjure all allegiance to the said miners' union."¹¹ In Cincinnati in 1919 seventeen manufacturing jewelers, all of whose establishments had been struck, introduced the contract,¹² and the following year a group of pattern jobbers in Toledo, Ohio, did likewise.¹³

Usually the motive in having strike-breakers sign yellow dog contracts is to enable the employer to secure an injunction protecting those contracts, thus putting a stop to picketing by the former employees. The metal polishers employed by the John Douglas Company of Carthage, Ohio called a strike for a closed shop on October 28, 1919, and thereafter picketed the plant. On December 1 the company abandoned its former open shop policy and entered into yellow dog contracts with its employees. In the latter part of February, 1920, officers of the union and pickets were served with notice of the contracts, in spite of which the picketing continued as before. Early in April the company therefore entered suit against the union, and secured an injunction restraining all attempts to persuade its employees to violate their contracts.¹⁴ The same sequence of events occurred with several New York clothing manufacturers in 1920 and 1921,¹⁵ as well as throughout the Kanawha Valley coal mining district of West Virginia in 1922.

It often happens that an employer who has just emerged victorious from a strike resolves to make similar disturbances impossible, or at any rate much less probable, in the future, and to that end requires each employee taken back to promise not to rejoin the union. The Western Union Telegraph Company introduced the contract twice under such

¹¹ Journal of the Knights of Labor, March, 1900, p. 1. See also *ibid.*, August, 1899, p. 1.

¹² 2 Law and Labor 14-15 (1920).

¹³ Pattern Makers' Journal, March, 1920, pp. 17-18.

¹⁴ John Douglas Co. v. Metal Polishers' Int. Union, 2 Law and Labor 188 (Ohio, 1920).

¹⁵ *Floersheimer v. Schlesinger*, 187 N. Y. Supp. 89 (1921); *Schwartz & Jaffee, Inc. v. Hillman*, 189 N. Y. Supp. 21 (1921).

circumstances, once in 1870 and again in 1883.¹⁶ In the case of the Hitchman Coal and Coke Company there had been three strikes lasting in the aggregate almost six months during the three years that the mine had been unionized,¹⁷ and it was in the spring of 1906, at the collapse of the last of the three, that the contracts were introduced. "About the 1st of June a self-appointed committee of employees called upon plaintiff's president . . . and asked upon what terms they could return to work. They were told that they could come back, but not as members of the United Mine Workers of America; that thenceforward the mine would be run non-union, and the company would deal with each man individually. They assented to this."¹⁸

In 1910, following the collapse of a national strike in the saddlery industry for the eight hour day, at least eleven firms required agreements not to belong to the union of leather workers as a condition of reemployment.¹⁹ Cyrus Currier and Sons required their molders and coremakers to sign yellow dog contracts in 1917, after a strike which had been halted by an injunction.²⁰ After the railway shop crafts strike of 1922 the Nashville, Chattanooga and St. Louis Railway refused to reinstate former employees unless they agreed not to be members of the Federated Shop Crafts.²¹ The Vail-Ballou Press, Inc., operated a union shop until 1921, when, a strike having occurred, it changed to a non-union shop with yellow dog contracts.²²

Years of depression are favored times for the introduction of the contracts, for the presence of large numbers of applicants for employment makes it easy to replace those who

¹⁶ Testimony of B. Frank Shrimpton before United States Commission on Industrial Relations. *The Commercial Telegraphers' Journal*, May, 1915, pp. 286-289.

¹⁷ *Hitchman Coal & Coke Co. v. Mitchell*, 245 U. S. 229, 237-239.

¹⁸ *Ibid.*, p. 239.

¹⁹ *Leather Workers' Journal*, August, 1912, pp. 459-460.

²⁰ *Cyrus Currier and Sons v. International Molders' Union*, 93 N. J. Eq. 61, 115 Atl. 66 (1921).

²¹ U. S. Railroad Labor Board, Decision No. 2305, March 26, 1924, 6 Law and Labor 127.

²² *Vail-Ballou Press, Inc. v. Casey*, 212 N. Y. Supp. 113 (1925).

refuse to sign, while the employer has little to lose if his establishment is closed down. The post-war depression of 1921, as has already been related, brought out large numbers of the contracts.²³ It sometimes happens that an employer, willing enough to pay the union scale of wages during prosperous years, insists upon a reduction of wages when business becomes less profitable, and in the conflict that ensues resorts to yellow dog contracts. The George H. Ellis Company of Boston, for example, operated a printing shop under a union agreement which expired on March 31, 1921. Wages were then reduced, the unions declared a strike, and the company introduced yellow dog contracts.²⁴ The Moore Drop Forging Company did not operate a closed union shop, though all its skilled employees were union members. In October, 1920 the company asked its men to accept a wage cut of ten per cent. This they refused to do, and on December 9 individual, anti-union contracts were introduced.²⁵ An association of women's clothing manufacturers in New York operated under a union contract from 1913 to 1920, when no agreement could be reached. The employees of one establishment went on strike to force a renewal of the agreement, whereupon the proprietor introduced yellow dog contracts.²⁶

In certain industries, particularly bituminous coal mining, the economic pressure of competition has been a potent factor in the spread of anti-union contracts. Operators in Pennsylvania and other high wage unionized states have seen their markets being taken away by non-union coal from West Virginia and Kentucky, and have resorted to yellow dog contracts to crush the union, reduce wages, and so meet competitive prices. Such was the case between 1925 and 1927, when a number of operators broke the Jacksonville agreement that maintained wages in the Central Competitive Field at a

²³ See above, p. 29.

²⁴ *George H. Ellis Co. v. McBride*, 3 Law and Labor 193 (Massachusetts, 1921).

²⁵ *Moore Drop Forging Co. v. McCarthy*, 137 N. E. 919 (Massachusetts, 1923).

²⁶ *Floersheimer v. Schlesinger*, 187 N. Y. Supp. 891 (1921).

much higher level than was being paid in the non-union regions.²⁷

A number of yellow dog contracts have been introduced under circumstances that were more or less unique. For example, John S. Perry, a stove manufacturer in Albany, New York, introduced individual, anti-union contracts without warning at the opening of his shop in the spring of 1884, after the customary winter shutdown.²⁸ The Reading Railroad in 1889 purchased the Reading Iron Works, and soon after introduced non-union promises.²⁹ The Lippencott Glass Company works at Alexandria, Indiana employed a number of union men when it was purchased in 1927 by the non-union Aladdin Industries, Incorporated. Before the year ended the plant was put upon a non-union basis, and every employee forced to sign a yellow dog contract.³⁰ When the shoe manufacturing establishment of Strout, Stritter and Company, Inc., of Lynn, Massachusetts changed in 1929 from a union shop to a non-union shop with yellow dog contracts, the editor of the *Shoe Workers' Journal* placed the blame upon factions of the workmen who had seceded from the established union and by a series of strikes made it impossible to operate the factory as a whole.³¹

The yellow dog contract has been most prevalent in bituminous coal mining, and has also been used extensively in the metal trades, the full fashioned hosiery industry, street railways, railroads, clothing and shoe manufacturing, and the printing trades. Few industries, if any, have been

²⁷ The Pittsburgh Coal Company was one of the leaders in this movement to abrogate the Jacksonville agreement, reduce wages, and install yellow dog contracts. J. D. A. Morrow, president of the company, defended the abrogation of the agreement on the ground that, if a closed shop contract, it was illegal; and if an open shop contract, it gave the company the right to sever its relations with the union and operate on an open shop basis. Senate Hearings on Conditions in the Coal Fields of Pennsylvania, West Virginia, and Ohio (1928), pp. 2531-2532.

²⁸ Report of the Executive Board of the Knights of Labor, 1884, p. 653.

²⁹ *Journal of United Labor*, July 11, 1889, p. 3.

³⁰ Circular, American Flint Glass Workers' Union, December 29, 1927, pp. 3016-3017.

³¹ *Shoe Workers' Journal*, March, 1929, p. 15.

entirely exempt, even railway mail clerks³² and public school teachers³³ having experienced their use. The great industrial states of Massachusetts, New York, Pennsylvania, and Ohio, together with the coal mining state of West Virginia, have witnessed the most extensive use of the contract, but probably no state in the union has been entirely free from it. The agricultural states of the south and the west have had least experience with the contract.

For the most part yellow dog contracts have spread slowly from plant to plant, as individual employers learned of their successful use by some other concern or were advised by attorneys to introduce them. The successful use of the contract by any one employer has usually been followed by similar attempts by other employers, whether in the same industry in other localities, or in other industries in the same locality.

There are a number of cases, however, in which the contracts have been introduced simultaneously by a group of employers in accordance with a prearranged plan. Many of the early presentations of the "document" in England were of this nature,³⁴ and as early as 1875 the Fall River, Massachusetts textile manufacturers introduced individual, anti-union contracts in concert.³⁵ Similarly the members of the National Founders' Association operating jobbing shops in Moline, Illinois introduced individual contracts early in 1907,³⁶ and seventeen manufacturing jewelers in Cincinnati, Ohio adopted the contract during a strike in 1919.³⁷ A number of saddlery manufacturers insisted upon the signature of anti-union contracts at the close of the leather workers' unsuccessful national strike in 1910.³⁸ These employers were all members of the National Saddlery Manu-

³² International Molders' Journal, May, 1911, p. 353.

³³ The best known example among the teachers is that of Seattle, Washington. See 10 Law and Labor 212 (1928).

³⁴ See above, p. 13.

³⁵ Robert Howard, "Progress in the Textile Trades," in *The Labor Movement: The Problem of To-day*, p. 224.

³⁶ Iron Molders' Journal, February, 1907, p. 124.

³⁷ 2 Law and Labor 14-15 (1920).

³⁸ Leather Workers' Journal, August, 1912, pp. 459-460.

facturers' Association. Eight members of the Chicago Heights Auto Dealers' Association introduced identical yellow dog contracts on July 7, 1926.³⁹

In July, 1898, in an effort to destroy a union among the ladies' tailors in New York, the employers organized the Merchant Ladies' Tailors' Society and locked out their employees, demanding that each sign a non-union pledge before he could be reemployed.⁴⁰ The Goldfield Consolidated Mines Company belonged to a mine operators' association in Goldfield, Nevada, which on December 7, 1907 passed a resolution binding its members to reduce wages; to reopen their mines, giving preference to former employees; to reduce the cost of living by twenty per cent in the district of Goldfield; to have no further dealings with the union; and to require of each applicant for employment a pledge that he was not and would not become, during the period of his employment, a member of Goldfield Miners' Union No. 220.⁴¹ In 1920, in an effort to put the entire building industry of Oklahoma City, Oklahoma, on a non-union basis the Builders' Association prepared to introduce yellow dog contracts. It was charged in union quarters that the Chamber of Commerce was back of this move. The second vice-president of the International Association of Bridge, Structural and Ornamental Iron Workers reported that he and other union representatives "tried in every way to get the Builders' Association to renew the agreement which expired on June 30, but this they refused to do, claiming if they did that they would be shut off from their credit and material and would be under the ban of all who signed for the open shop."⁴² An interesting case occurred in 1910 in Aberdeen, South Dakota, where the Business Men's League adopted a form of anti-union contract which its members were expected to introduce.⁴³ The League differed from most of the employers'

³⁹ Machinists' Monthly Journal, August, 1926, pp. 386-387.

⁴⁰ Louis Levine, *The Women's Garment Workers*, p. 97.

⁴¹ Goldfield Consolidated Mines Co. v. Goldfield Miners' Union No. 220, 159 Fed. 500, 517-518 (1908).

⁴² Bridgemen's Magazine, August, 1920, p. 413.

⁴³ The Bricklayer, Mason and Plasterer, April, 1910, pp. 75-76.

associations that introduced yellow dog contracts in that its members were taken from many instead of from a single industry.

In recent years certain labor agencies which make a business of assisting employers to defeat attempts on the part of their employees to organize have been instrumental in securing the adoption of yellow dog contracts, particularly in the full fashioned hosiery industry. A resolution introduced by delegates of the United Textile Workers at the 1928 convention of the American Federation of Labor declared that "in many cases . . . private detectives have prompted the use of this device and frequently are paid a certain commission for each employee signing this document."⁴⁴ One of the firms in this industry which used this method of installing yellow dog contracts was the Real Silk Hosiery Mills, Inc., of Indianapolis, Indiana:

The company had retained the services of a firm of industrial counsellors which specializes in installing and maintaining individual contracts. This firm supplied a contract which the Real Silk Company required its employes to sign, in which they agreed that they would not join the union while in the employ of the company.⁴⁵

The Kraemer Hosiery Company of Nazareth, Pennsylvania was another concern in the business of manufacturing full fashioned hosiery which employed a labor agency to install yellow dog contracts in its factory. Its relations with the agency and the services which the latter agreed to perform are described in some detail in a brief filed by the union in a subsequent injunction case.

In the early part of May, 1929, the Kraemer Hosiery Company entered into a written agreement with the Allied Manufacturers' League, Inc. . . . Under the terms of this agreement the so-called 'League' agreed to assist the Kraemer Hosiery Company to install the so-called 'individual contract system' in the plant, and to assist the company in various ways in combating what the contract

⁴⁴ Proceedings, Forty-eighth Annual Convention of the American Federation of Labor, p. 129.

⁴⁵ Information Service, Department of Research and Education, Federal Council of the Churches of Christ in America, May 19, 1928, p. 2. This Department and the Social Justice Commission of the Central Conference of American Rabbis had just completed a study of industrial relations at the Real Silk plant.

refers to as 'communism and radical labor movements.' The 'League' also agrees to assist the company in the event of 'strife or strike, suspended, pending or active,' to secure new employees, and to assist it 'in securing instructors to teach any employees the technique of the company's business.' The Allied Manufacturers' League, Inc., is a New York Corporation, all the stock of which is owned by one person, and the activities of which are solely and exclusively under the supervision and direction of Horace L. MacDonald. This 'League' has been engaged in the business of securing 'clients' among the manufacturers of full-fashioned hosiery, to whom it can sell the plan of having their employees sign what they describe as the 'individual contract form,' but which is generally known and referred to by employers and employees as the 'yellow dog contract.'⁴⁶

Several instances are on record of the yellow dog contract having been used by workers against their employers. One occurred in 1891 when the Operators' and Cloak Makers' Union No. 1 of New York, emerging victorious from a lock-out, forced the employers to sign the following agreement: "We the undersigned cloak contractors of New York declare that we locked out our workmen without cause and we agree not to belong to the Contractors' Association."⁴⁷

The information available as to the size of the concerns that resort to the yellow dog contract indicates that for the most part it is small or medium sized plants that do so, the larger establishments showing a preference for company unions. Of fourteen cases in which we are given fairly reliable figures as to the number of employees of individual firms using the contract, in only four were there one thousand or more persons affected. By far the largest concern was the Interborough Rapid Transit Company, which employed 14,000 men.⁴⁸ The Real Silk Hosiery Mills, Inc., with 3200 employees,⁴⁹ the Reading Railroad with 3000,⁵⁰ and the

⁴⁶ Brief for Appellant, *Kraemer Hosiery Company v. American Federation of Full-Fashioned Hosiery Workers* (1931), pp. 14-15. For a full statement of the aims and purposes of the Allied Manufacturers' League (Inc.) see Senate Judiciary Committee Hearings on the Confirmation of Parker (1930), pp. 50-52.

⁴⁷ Louis Levine, *The Women's Garment Workers*, p. 59.

⁴⁸ *Interborough Rapid Transit Co. v. Lavin*, 159 N. E. 863, 866 (New York, 1928).

⁴⁹ Information Service, Department of Research and Education, Federal Council of the Churches of Christ in America, May 19, 1928, p. 1.

⁵⁰ *Journal of United Labor*, July 11, 1889, p. 3.

Pacific Electric Railway Company with 1500⁵¹ were the only remaining large companies in the group. Of the remaining ten employers eight had between 100 and 320,⁵² whereas the two smallest had respectively thirty⁵³ and from fourteen to sixteen.⁵⁴

In several instances where a number of employers were associated in an effort to install yellow dog contracts or to secure injunctions enforcing them, both the total number of employees and the number of the companies are known. Thus the 316 coal companies associated in the Red Jacket case employed a total of about 40,000 men,⁵⁵ for an average of about 126 per company. Similarly the seventeen manufacturing jewelers of Cincinnati who installed yellow dog contracts in 1919 employed a total of 300 jewelers,⁵⁶ making the average about seventeen or eighteen.

Often the application for employment and the promise not to join a union are embodied in the same instrument. Obviously in such cases the employee does not get a copy of the contract. Even where the anti-union promise is on a separate piece of paper, however, it is the almost universal practice to make only an original, and deposit that in the com-

⁵¹ *Montgomery v. Pacific Electric Railway Co.*, 293 Fed. 680, 682 (1923).

⁵² These firms were Brownhill and Kramer, Inc., with 320; the National Equipment Company, with 300; the Hitchman Coal and Coke Company, with from 200 to 300; the John Douglas Company, with 267; Mitchell Bros. Company, with 150; and Cyrus Currier and Sons, George H. Ellis Company, and Floersheimer, with 100 each. The National Equipment Company actually employed 600, but only 300 of these were asked to sign the contracts. *National Equipment Co. v. Donovan*, Law and Labor, October, 1919, p. 9 (Massachusetts, 1919). 178 employees of the Moore Drop Forging Company were either discharged for refusing to sign yellow dog contracts or went on strike as a result, but it is not stated whether or not they comprised the company's entire force of employees. *Moore Drop Forging Company v. McCarthy*, 137 N. E. 919, 921 (Massachusetts, 1923).

⁵³ *Altman v. Schlesinger*, 4 Law and Labor 292 (New York, 1922).

⁵⁴ *Exchange Bakery and Restaurant, Inc. v. Rifkin*, 245 N. Y. 260, 157 N. E. 130, 134 (1927).

⁵⁵ Senate Hearings on Conditions in the Coal Fields of Pennsylvania, West Virginia, and Ohio (1928), p. 408.

⁵⁶ 2 Law and Labor 14-15 (1920).

pany files. The employee is given a contract to sign, and is expected to sign it immediately and hand it back to the official who presented it. For an employee to ask for a copy to keep is to subject him to suspicion as an undesirable. A member of a Y. W. C. A. Student-Industrial Experiment group, who secured a job with the Crackerjack Company in Chicago in 1928, related this experience:

After I had worked there a few days a girl came around with some papers for me to sign—and among them a yellow dog contract. I read it thru (much to the disgust of the stenographer) and signed it with no idea at all as to what it was all about. At the next meeting of our group I casually mentioned it and ‘Ah, a yellow dog contract in our midst,’ greeted me. They told me to try to get hold of a copy, saying I probably wouldn’t succeed but for me at least to try.

I wasn’t able to get the girl who had given it to me, so I finally accosted the Employment manager, asking, ‘May I see a copy of the slip I signed when I began working here?’ He was evidently annoyed at my question.

‘Was it white?’ said he.

‘Yes.’

‘That’s nothing that will incriminate you in any way.’

‘I just wanted to know if I might see one.’

‘You should have read it when you signed it.’

‘What would you have done if I hadn’t signed it?’

‘We wouldn’t have hired you. We reserve the right to hire and fire whom we please.’

‘Well, since I’ve signed it I just wanted to know if I might not have a copy of it.’

‘I won’t even give it to you if you’re going to take it away.’

‘I won’t take it away if you don’t want me to’—whereupon, reluctantly and scornfully, he handed me a copy, reiterating while I read it, ‘It’s nothing that will incriminate you in any way.’

‘It seems kind of funny,’ said I, ‘if it’s alright, that I can’t have one.’

‘A lot of funny things about business nowadays!’ thundered he and I handed the paper back and made my exit.

The next day the girls told me that the forelady wanted to see me . . . She had a check waiting for me—\$11.62 for my week’s work—and told me my services would no longer be required. I couldn’t help grinning and asking if she knew why I was being fired. She said no, that she had told the Employment manager that I was a nice quiet girl and a good worker and she’d rather lay off one of the other girls, but he wouldn’t let her.⁵⁷

Often the contracts are jealously guarded, and it is only with considerable difficulty that a copy can be obtained. In the course of his investigations the writer requested copies

⁵⁷ This report was sent to the author by Marjorie Stocking, whose experience this was.

of their contracts from about half a dozen concerns, and without exception this was refused. In the office of the West Virginia Mine Workers the author found a photostat of the contract used by the Hatfield-Campbell Creek Coal Company of Putney, West Virginia, which, according to an officer of the union, had been secured in the following manner:

A miner who was a union sympathizer made application for employment at the Hatfield-Campbell Creek Coal Company at Putney, West Virginia, and after the mine foreman had given him employment and an order for mine checks he presented that order at the window of the coal company office. There he was presented with the yellow dog contract, which he refused to sign because he could not read without his glasses. He asked permission to take the contract home, promising to bring it back the next day. Permission was refused at first, but he was later allowed to keep the contract over night provided he brought it back signed the next morning. He brought it into our office that night and we had photostat copies made. Then he took the original back.⁵⁸

It not infrequently happens that employees sign yellow dog contracts without being aware of that fact. The writer in 1930 asked a dozen employees of the United Railways & Electric Company of Baltimore whether or not they had had to promise not to join an outside union, and found them evenly divided in their answers. Officers of the company, however, asserted that each man received a copy of the contract, and had therefore ample opportunity to familiarize himself with its contents. In July, 1931, a West Virginia miner told the author that he did not know whether or not he had signed a yellow dog contract. When he applied for work he was told to sign some papers; since he could not get a job without signing, and since he needed a job, he signed the papers without reading them. The author learned by questioning other employees of the same company that one of the papers had been a yellow dog contract. It has been asserted that in the steel industry union officers often found non-English speaking employees who thought that they had merely signed employment contracts, when as a matter of fact they had signed yellow dog contracts.⁵⁹

⁵⁸ Interview with Brant A. Scott, vice-president, July 28, 1931.

⁵⁹ Interview with John P. Frev, Secretary-Treasurer, Metal Trades Department of American Federation of Labor, November 2, 1931.

Sometimes no effort is made to explain the nature of the contract, and the new employee is scarcely given an opportunity to read it. This, for example, was the experience of a girl who was employed at the Hotel Astor in New York in 1925:

I took a job as a chambermaid, and after the housekeeper hired me she sent me down to the office to fill out the necessary blanks. The clerk in the office handed me this long printed form, and made little X's at three different places, and said, 'Put your name here.' I wrote very slowly and glanced back over what I was signing. One of the clauses was a promise not to join the union of hotel employees. He waited while I signed and then took it back without telling me to read it and without giving me an opportunity to read it. Most of the chambermaids were old women who probably could not have either read it or understood it without a great deal of difficulty.⁶⁰

On the other hand the writer was told by a former employee of the Cambria Silk Hosiery Company of Philadelphia that "the man who gave me the contract told me to read it and walked away to give me a chance."⁶¹ Similarly at Brownhill and Kramer, Inc., the foreman gave new employees a chance to read the contract before they signed it, and in addition told them that it meant that they could not join the union.⁶²

The circumstances under which Horace L. MacDonald of the Allied Manufacturers' League, Inc., secured the signatures of the employees of the Kraemer Hosiery Company have been set forth in considerable detail in a brief subsequently filed by the union in an injunction case.

Mr. MacDonald put in his appearance at the plant of the Kraemer Hosiery Company on June 18, 1929, and by appointment, there met the Superintendent, Mr. Winkler, on the evening of that date. Supplied with mimeographed forms of the 'Yellow Dog Contract,' Winkler, MacDonald, Solomon Davis and the unknown 'labor spy' at about 10:30 P. M. went to the knitters floor in the Kraemer Hosiery Company mill; . . . a signal was given by someone and all the machines were shut down. When the men left their machines and went to the 'pen' Winkler and MacDonald told them that they were to sign the so-called 'individual contract form.' For two hours they tried to persuade the night force to sign, telling them that the purpose of the contract was to defeat 'communism.' During the discussion and argument, the men told them that 'it was a yellow

⁶⁰ Interview with Marion Hayes, July 27, 1931.

⁶¹ Interview with John Fisher, September 16, 1931.

⁶² Interview with Chester Frank, September 17, 1931.

dog contract,' and realizing that they had come to the night force first because the men were younger, they refused to sign. Winkler and MacDonald then left 'Solomon Davis' and the unknown 'labor spy' in the plant and went to the home of the plaintiff, A. G. Schmidt, whom they brought back to the plant. While they were gone, the night foreman, Bowersox, locked the one door of exit, ostensibly to keep the men there until Mr. Schmidt arrived. When Mr. Schmidt arrived, the men told him that they would not sign the 'yellow dog contract' and he then spoke to them for some time in an effort to have them sign. He told them that he was going to run a non-union shop and wanted them to sign the individual contract so that he would have protection from outside interference and could run his plant in a business-like way, and that he hired MacDonald for this purpose, and that if they would not sign 'the individual contract forms' they would have to get out. After discussing and arguing the matter for a considerable length of time, practically the entire night force refused to sign and left the plant about 2 o'clock in the morning.

The following day Mr. A. G. Schmidt had the head foreman, Mr. Hartzell, send all the employees on the day shift into his private office, where in the presence of MacDonald, Solomon Davis and the unknown 'Labor Spy' he informed them that they would have to sign 'the individual contract form,' telling some of them that he had to do it for his own protection and that the 'Reds' were coming to Nazareth. When they hesitated or refused to sign, as most of them did, he either told them that their signing 'means nothing but that just while you are employed by the Kraemer Hosiery Company you are not to join a Union or belong to a Union,' or told them that if they did not sign they were fired or that they could not work in the mill . . .

Many of these men were married and had large families dependent upon their employment as the only means of income, and thus confronted with the alternative of signing or losing their means of livelihood, the majority, on June 20, 1929, after remonstrating and arguing against signing, put their names upon the mimeographed forms supplied by MacDonald.

All of the witnesses called by the plaintiffs while they were still employed by the Company as knitters, testified that they signed these papers, against their wills or because they knew they had to sign or lose their jobs . . .

Some of those who signed were either not given sufficient time to read the 'individual contract form' or realizing, from what other employees had told them, that they would be fired if they did not sign, placed their signatures on the dotted line without undertaking to read it at all. The demand that they must sign led some of them to do so without even thinking 'over it.' None of the employees who were thus compelled to sign the 'Yellow Dog Contract' were given an opportunity to consult with anyone as to whether or not they were signing away any of their rights, or whether it was advisable to sign a paper of this kind, nor were any of them given a copy of the 'Yellow Dog Contract,' which they might subsequently use for consultation upon this subject; or if any rights existed for them, as employees therein, they might have these copies as evidence thereof.⁶³

⁶³ Brief for Appellant, *Kraemer Hosiery Company v. American Federation of Full-Fashioned Hosiery Workers* (1931), pp. 16-19.

Occasionally an employer who uses the yellow dog contract will permit a few men to work without having signed, particularly when business is good and the union is not threatening. The writer was told by several miners in West Virginia that they had refused to sign the contract, and were nevertheless employed by operators who made all other employees sign. One miner declared that he had been told several times to stop at the office and sign the contract, but had ignored the orders without incurring any penalty. The Askew Saddlery Company of Kansas City, Missouri, which had adopted the yellow dog contract following a strike in 1910, was in 1913 enforcing it "only to the extent of the needs of the firm. When business was good and mechanics in demand men were employed with but little questioning. As business became dull the third degree was applied, and those who acknowledged membership in the union were refused employment."⁶⁴ Though the Dunbar Flint Glass Company of Dunbar, West Virginia had installed the yellow dog contract, some of the men were not required to sign it until a representative of the American Flint Glass Workers' Union discussed an organizing campaign with them, whereupon they were forced to sign or were discharged.⁶⁵ These cases are the exceptions rather than the rule, however, in most instances the signature of every employee being required while the contract is in use.

It is not necessary, to give rise to a yellow dog contract, that an employee assent to any particular form of words. It is sufficient that there be a general understanding that no union is to be joined during the employment period. Justice Brandeis, in a note to his dissenting opinion in the *Hitchman* case, has told us in what manner the individual, anti-union contract was entered into by the *Hitchman* employees before the introduction of the written contracts:

Prior to that time [before the written contract was introduced], the agreement rested in oral understanding merely, and is suffi-

⁶⁴ Leather Workers' Journal, December, 1913, p. 116.

⁶⁵ Circular, American Flint Glass Workers' Union, April 25, 1929, p. 3281.

ciently indicated in the following excerpts from the testimony of the mine superintendent as to what he told the men applying for employment:

'I also told them that any man who wanted to become a member of the United Mine Workers—that was his business—but he could not be a member of the United Mine Workers and be affiliated with the United Mine Workers and be under the employ of the Hitchman Coal & Coke Company, or be under the jurisdiction of the United Mine Workers; that the mine was run non-union so far as the United Mine Workers of America were concerned.'

'Q. You mean you made every man understand that while he worked for the Hitchman Company he must keep out of the union?'

'A. Yes, sir; or at least they said they understood it.'⁶⁶

It is interesting to note that the injunction rested upon this oral contract, as employment cards containing the anti-union promise were not required to be signed until two months after the original restraining order was issued.⁶⁷

In a trade union journal in the last decade of the nineteenth century we find this account of the manner in which an anti-union understanding was reached in Indianapolis:

Col. Oran Perry, city freight agent of the Pennsylvania road, summoned the freight handlers before him, saluting them with the remark, 'All of you who desire to remain with the company instead of the union will walk to this side of the room.'

Fifteen did so and five refused. Thereupon the . . . Freight Agent went on to say:

'I do not want to be misunderstood. This company will not furnish bread and butter to men who are likely to prove unfaithful to it. You cannot be loyal to the company and to your union, and if you prefer the union to the company that pays you your wages, well and good. It is not necessary to mince matters. You five men are discharged, and you will get your pay at once. The others can return to work, but they cannot continue to work and belong to the union. This shall not be a union freight house while I am in charge.'⁶⁸

An employee may become subject to a yellow dog contract without ever agreeing in express terms to it. The Supreme Court of Georgia has held that where an employee continues to work after a non-union policy has been announced by his employer, an anti-union contract is implied which will be protected in the same manner as a similar express contract.⁶⁹

⁶⁶ *Hitchman Coal & Coke Company v. Mitchell*, 245 U. S. 229, 264.

⁶⁷ *Ibid.*, p. 263.

⁶⁸ *Monthly Journal of the International Association of Machinists*, February, 1893, p. 9.

⁶⁹ *Callan v. Exposition Cotton Mills*, 99 S. E. 300 (Georgia, 1919).

CHAPTER III

PROVISIONS IN THE CONTRACT

Individual, non-union agreements range in length from simple statements of a single sentence to complex documents that cover several pages. The essential portion of each is similar, however, and consists usually of a promise by the employee not to belong to a union during the particular employment. The contract used by the St. Louis and San Francisco Railway Company in 1911, that gave rise to the famous *Coppage v. Kansas* case, consisted merely of such a declaration. "We, the undersigned," it read, "have agreed to abide by your request, that is, to withdraw from the Switchmen's Union, while in the service of the Frisco Company."¹ Equally simple was the form used by the Cigar-Manufacturers' Union of Cincinnati in 1880, which read as follows: "I hereby renounce my membership in the Cigar-makers' Union, and pledge my honor that I will not become a member thereof, or aid such a union, while in the employ of the firm of . . ."² Rather crudely drawn but nevertheless short and to the point was the contract introduced by the Alfrey Heading Mills of Jonesboro, Arkansas in 1913: "This is to certify that I do not belong to any union, and while in your employ will not join any union, except I did join the Local Coopers' Union, recently organized at Jonesboro, Ark., and agree to drop my name from same and not pay any more dues in same."³ Though after the *Hitchman* decision the contracts used were often longer and more complex, the simple, direct promise did not entirely disappear. In 1928, for example, school teachers in Seattle, Washington were required to sign a declaration in the following form: "I hereby declare that I am not a member of the American Federation

¹ *Coppage v. Kansas*, 236 U. S. 1, 7.

² *Iron Molders' Journal for the Month Ending February 29, 1880*, p. 6.

³ *Coopers' International Journal*, January, 1914, p. 24.

of Teachers, or any local thereof, and will not become a member during the term of this contract.”⁴

By far the most important contract from the historical point of view was that used by the Hitchman Coal and Coke Company. The Hitchman form was as follows:

I am employed by and work for the Hitchman Coal and Coke Company with the express understanding that I am not a member of the United Mine Workers of America, and will not become so while an employee of the Hitchman Coal and Coke Company; that the Hitchman Coal and Coke Company is run non-union and agrees with me that it will run non-union while I am in its employ. If at any time I am employed by the Hitchman Coal and Coke Company I want to become connected with the United Mine Workers of America, or any affiliated organization, I agree to withdraw from the employment of said company, and agree that while I am in the employ of that company I will not make any efforts amongst its employees to bring about the unionizing of that mine against the company's wish. I have either read the above or heard the same read.⁵

It was to be expected that, of the many employers following the lead of the Hitchman Company in introducing the contracts, a considerable number should adopt its exact wording as well. Particularly has this been true in the coal mining and in the hosiery industries. In the former, among those using the precise Hitchman wording might be mentioned the Winding Gulf Colliery of Winding Gulf, West Virginia; the Nelson Fuel Company of Leslie, West Virginia (contract no. 2); the Micajah-Pocahontas Coal Company of Micajah, West Virginia;⁶ and the Fentress Coal Company of Wilder, Tennessee.⁷ In the hosiery industry the Cambria Silk Hosiery Company of Philadelphia⁸ and the Chipman

⁴ 10 Law and Labor 212 (1928).

⁵ *Hitchman Coal & Coke Company v. Mitchell*, 245 U. S. 229, 263-264. This contract was not used in written form until two months after the original restraining order had been issued. Since the rights of the parties accrued as of the time the bill was filed, the courts passed, not upon this written contract, but upon an essentially similar if less elaborate oral one. This made no difference, however, since the contract is not one required by law to be in written form. Proof is merely easier if the contract is written.

⁶ This company, as well as the two companies mentioned immediately before it, were among the plaintiffs in the Red Jacket case. Copies of their contracts were obtained at the headquarters of the American Federation of Labor.

⁷ *United Mine Workers' Journal*, July 15, 1924, p. 5.

⁸ Senate Judiciary Committee Hearings on the Confirmation of Parker (1930), p. 50.

Knitting Company of Easton, Pennsylvania,⁹ followed the exact form of the Hitchman contract. Among employers in other lines of business using the same wording might be mentioned the Ohio Shoe Company of Lancaster, Ohio,¹⁰ and Middishade (Inc.),¹¹ a Philadelphia clothing manufacturer.

A great many other employers, while not using the precise Hitchman wording, nevertheless followed it more or less closely. Thus the J. D. Boone Coal Company of Kanawha Falls, West Virginia merely changed a number of unimportant words.¹² Similar paraphrasings or elaborations of the Hitchman contract were extensively used in the West Virginia coal fields, a number of them by plaintiffs in the Red Jacket case. The Dunbar Flint Glass Company of Dunbar, West Virginia¹³ and the Aladdin Industries, Inc., of Alexandria, Indiana¹⁴ were two companies in the glass industry that used a contract based upon and very similar to that of the Hitchman Company.

The Hitchman contract, after making each employee declare that he was not then a union member, made him promise (1) not to become a union member during the employment, (2) to withdraw from the employment if he wished to join a union, and (3) to make no efforts during the employment to unionize the mine against the company's wish. These promises by no means exhaust the possibilities for limiting activities that might prove dangerous or undesirable to the employer. The employee might also be required to promise not to strike, to adjust all differences by means of individual bargaining, to have no dealings with union representatives, not to get under the influence of or assist the union in any way, and not to interfere with the company's business or employees after quitting the employ-

⁹ Ibid., p. 49.

¹⁰ Shoe Workers' Journal, February, 1914, p. 17.

¹¹ 71 Cong. Rec. 3639 (1929).

¹² Senate Hearings on Conditions in the Coal Fields of Pennsylvania, West Virginia, and Ohio (1928), p. 1744.

¹³ Circular, American Flint Glass Workers' Union, March 28, 1927, p. 2866.

¹⁴ Ibid., December 29, 1927, p. 3016.

ment; and all these provisions, in addition to some or all of the Hitchman clauses, are found in the individual, anti-union contracts used by other employers.

As early as 1881 the Excelsior Manufacturing Company of St. Louis, Missouri made each employee promise "not to connect himself with any union or other organization that attempts or claims the right to control the shops of the Excelsior Manufacturing Company; nor to join in any strike against said company during the term of this contract."¹⁵ The harness makers employed by the Kries Bros. Manufacturing Company of Logansport, Indiana were in 1899 made to promise to "in no way assist in labor agitations, strikes, or in any organizations which may be organized and will be organized to interfere with the business of the party of the first part."¹⁶ The promise not to join in any strike called against the employer is found in contracts used by the Alabama Fuel and Iron Company¹⁷ and the George H. Ellis Company of Boston,¹⁸ whereas the Crowell Publishing Company of Springfield, Ohio even required its workmen to agree not to be parties to any strike or boycott.¹⁹

One form of contract widely used in the West Virginia coal fields bound the miners "to adjust any and all differences with the Superintendent of the Company, if that be possible; but if the parties hereto fail to adjust such differences, then the party of the second part agrees to peaceably leave the employ and vacate the premises of the Company within a period of five days from the date of the arising of such differences."²⁰ Similarly the waitresses in the employ of the Exchange Bakery and Restaurant, Inc., of New York prom-

¹⁵ Iron Molders' Journal for the Month Ending August 31, 1881, p. 3.

¹⁶ Leather Workers' Journal, November, 1899, p. 33.

¹⁷ United Mine Workers' Journal, December 1, 1920, p. 8.

¹⁸ 3 Law and Labor 193 (1921).

¹⁹ International Bookbinder, May, 1925, p. 167.

²⁰ This form was used by a number of plaintiffs in the Red Jacket case, among them the Meadow Creek Coal Company, the Greenbrier Smokeless Coal Company, the Imperial Smokeless Coal Company, and the Nelson Fuel Company (contract no. 1).

ised to adjust any dispute that might arise by individual bargaining.²¹

Some employers have even bound their workmen not to discuss union membership or conditions of employment with a union representative. The contract used by the Oklahoma City, Oklahoma building trades in 1920 declared that

While he is employed by said employer the employe will not (a) become a member of any labor union, nor (b) have any dealings, communications, interviews or discussions with any officers, representatives, organizers or other agents of any labor union in relation to membership by said employe in any such labor union, or in relation to the conditions of said employe's employment with said employer.²²

Similar provisions, couched in almost identical language, were used, among others, by bookbinders of Cincinnati in 1921;²³ by Mitchell Bros. Company, manufacturers of women's clothing in Chicago, in 1923;²⁴ and by the Chicago Heights Auto Dealers' Association of Chicago Heights, Illinois in 1926.²⁵

It often happens that employers, fearing that their workmen may cooperate with or assist the union even though they are not members of it, incorporate into the contracts provisions designed to prevent such activities. As far back as 1873 each employee of Stearns, Hill and Company of Erie, Pennsylvania was made to promise, "I will not countenance or assist in any combination of workingmen having in view any interference whatsoever with the business of said Stearns, Hill and Company."²⁶ In 1880 cigarmakers in Cincinnati had to promise, not only not to join the Cigarmakers' Union, but also not to aid it.²⁷ The crockery manufacturing firm of Knowles, Taylor and Knowles of East Liverpool, Ohio in

²¹ Exchange Bakery & Restaurant, Inc. v. Rifkin, 157 N. E. 130 (N. Y., 1927).

²² Bridgemen's Magazine, August, 1920, p. 414.

²³ International Bookbinder, February, 1921, p. 51.

²⁴ 5 Law and Labor 251 (1923).

²⁵ Machinists' Monthly Journal, August, 1926, p. 387.

²⁶ Iron Molders' International Journal for the Month Ending July 31, 1873, p. 47.

²⁷ Iron Molders' Journal for the Month Ending February 29, 1880, p. 6.

1887 bound its employees not to attend a meeting of a labor organization.²⁸ The Alabama Fuel and Iron Company made each of its workmen promise that he would not subject himself in any way to the influence or control of the United Mine Workers of America, or other affiliated labor organization, or any of its officers or agents;²⁹ and identically the same provision, except for the name of the union, was incorporated into the contract used by the Boston printing establishment of George H. Ellis Company in 1921.³⁰ Even the thoughts of workingmen have not escaped contractual regulation, the employees of a number of coal companies being bound not even to approve of the organization of a union.³¹ The New England Fuel and Transportation Company, a coal mining company operating in West Virginia, made its employees promise to "work for said company without regard to any rules, laws, regulations, or instructions of the United Mine Workers of America or of any other labor organization."³² It should be remembered that in each of these cases the contract also contained a promise by the employee not to join a union so long as the employment relation existed.

The Hitchman contract, while binding the employee to make no efforts during the employment to unionize the mine, did not attempt to limit such activities after the employment relation had been terminated. One form of contract used by coal companies in West Virginia and Pennsylvania expressly prohibited all such efforts after the employment had ended, stipulating that "if and when said relation of employer and employee, at any time and under any circum-

²⁸ Report of the General Executive Board of the Knights of Labor, 1887, p. 1436.

²⁹ United Mine Workers' Journal, December 1, 1920, p. 8.

³⁰ 3 Law and Labor 193 (1921).

³¹ Among these companies were the Quemahoning Creek Coal Company and the Island Creek Coal Company. See 5 Law and Labor 274 (1923) and Senate Hearings on Conditions in the Coal Fields of Pennsylvania, West Virginia, and Ohio (1928), pp. 1950-1951. The Margarette Coal Company and the Lockie Fire Creek Coal Company, plaintiffs in the Red Jacket Case, also used this provision.

³² Senate Hearings on Conditions in the Coal Fields of Pennsylvania, West Virginia, and Ohio (1928), p. 1896.

stances, terminates, the employee agrees that he will not then or thereafter in any manner molest, annoy, or interfere with the business, customers, or employees of the employer, and will not aid or encourage anyone else in so doing.”³³ The National Equipment Company³⁴ and the Moore Drop Forging Company,³⁵ both of Springfield, Massachusetts, used a similar provision, with wording almost identical.

Instead of making their employees promise to withdraw from the employment upon joining a union, as did the Hitchman Company, other employers have achieved the same result by having their workmen promise to give notice of their intention to become union members, or secure permission before joining. Thus the members of the Merchant Ladies’ Tailors’ Society of New York made each of their employees promise to notify his employer in case he joined a union.³⁶ The contracts used by the National Equipment Company³⁷ and the Moore Drop Forging Company³⁸ contained this clause: “That if I hereafter apply for membership in any trade union I will at once notify my employer, who may thereupon terminate my employment.” The Mossberg and Granville Manufacturing Company of Providence, Rhode Island required thirty days’ notice of an employee’s intention to join a union,³⁹ whereas the Fillmore Avenue Foundry and Iron Works of Buffalo, New York contented itself with three days’ notice in writing.⁴⁰ Most interesting of all were the contracts used by the Minneapolis, St. Paul and Sault Ste. Marie Railway Company and the Sioux City Brick and Tile Company of Sioux City, Iowa, the former of which bound each employee to join no union “except by permission of the general man-

³³ The companies using this provision were the same mentioned in note 31, above.

³⁴ *Machinists’ Monthly Journal*, October, 1919, p. 934.

³⁵ *International Brotherhood of Blacksmiths, Drop Forgers and Helpers Monthly Journal*, February, 1921, p. 4.

³⁶ Louis Levine, *The Women’s Garment Workers*, p. 97.

³⁷ *Machinists’ Monthly Journal*, October, 1919, p. 934.

³⁸ *International Brotherhood of Blacksmiths, Drop Forgers and Helpers Monthly Journal*, February, 1921, p. 4.

³⁹ *Monthly Journal of the International Association of Machinists*, June, 1900, p. 308.

⁴⁰ *Iron Molders’ Journal*, September, 1906, p. 672.

ager in writing,"⁴¹ and the latter of which made each workman declare that "I am not affiliated with any brickmakers' union and I am not contemplating joining one without first consulting with the Sioux City Brick and Tile Company's officials."⁴²

In many contracts some particular union is named which the employee promises not to join, whereas in others the workman agrees not to connect himself with any union at all. As a practical matter there is little or no difference between these promises, since in most instances there is only one well established union operating in a trade. Where more than one union is in the field, the contracts either provide against each by name, or else against all unions without troubling to enumerate them. In a few instances, however, the promise is somewhat broader, and might be held to include other organizations in addition to trade unions. The employees of Stearns, Hill and Company of Erie, Pennsylvania, for example, promised not to "countenance or assist in any combination of workingmen having in view any interference whatsoever with the business of said Stearns, Hill and Company."⁴³ The Washington and Old Dominion Railway bound each employee "not to become a member of nor aid, assist or encourage any union, order or other organization the majority of whose members are composed of railroad or railway men."⁴⁴ The Great West Saddlery Company of Winnipeg and Calgary, Canada required its employees to agree not to join any organization that aided strikes or boycotts against any employer.⁴⁵

In several instances the prohibition against joining a union is limited in one way or another. Thus the contract of the United States Gypsum Plaster Company merely bound its employees not to join "the I. W. W. or any other communistic

⁴¹ Monthly Journal of the International Association of Machinists, November, 1900, p. 603.

⁴² The Bricklayer, Mason and Plasterer, August, 1917, p. 125.

⁴³ Iron Molders' International Journal for the Month Ending July 31, 1873, p. 47.

⁴⁴ The Railroad Trainman, October, 1920, p. 610.

⁴⁵ Leather Workers' Journal, January, 1912, p. 177.

or like organization,"⁴⁶ apparently placing no obstacle in the way of a union of the American Federation of Labor type. The Imperial Glass Company made its packers promise not to join a packers' union "until such action is taken by the packers in all other glass factories which now cooperate with the American Flint Glass Workers' Union."⁴⁷ The Kennecott Copper Corporation of Kennecott, Alaska declared that "The company has not the slightest objection to retention of membership in any labor union or organized body of workmen which is not active at or in the vicinity of Kennecott, or is not seeking membership among the employees of this company."⁴⁸

By far the most elaborate contract, in its enumeration of prohibited acts, is that used by Brownhill and Kramer, Inc., Philadelphia manufacturers of full fashioned hosiery. Each employee, after stating that he was not a union member, promised that during the employment he would not

- (a) join or become a member of any of said trade-union organizations, associations, or federations,
- (b) apply for membership in any of them,
- (c) secretly or otherwise agree to join or become a member of any of said trade-union associations, organizations or federations without actually joining the same or becoming a member thereof at the time of agreeing to do so,
- (d) secretly or otherwise become in any way affiliated with any of said trade-union associations, organizations or federations,
- (e) secretly or otherwise, in any way, aid or assist any of said trade-union associations, organizations or federations or any of the members thereof or any person connected with or representing them or any of them in any effort to organize or unionize the mill and plant of said Brownhill and Kramer or to interfere with or molest the employees of said Brownhill and Kramer or to induce, persuade or encourage any of said employees to quit their employment by Brownhill and Kramer or to join or become a member of any of said trade-union associations, organizations or federations, or, in any other way, to promote dissension or dissatisfaction amongst the employees of said Brownhill and Kramer.⁴⁹

⁴⁶ Senate Judiciary Committee Hearings on the Confirmation of Parker (1930), p. 47.

⁴⁷ United Mine Workers' Journal, July 11, 1912, p. 2.

⁴⁸ Ibid., May 30, 1918, p. 24.

⁴⁹ Bill of Complaint, Brownhill and Kramer, Inc. v. American Federation of Full-Fashioned Hosiery Workers (1931), pp. 30-31.

In some contracts the promise not to join a union is not expressly required, but other promises are insisted upon which are inconsistent with union membership, or which deprive the employee of the right to participate in certain essential union activities. The most commonly found provisions of this nature are those which require the workman to agree not to strike, not to unite with other employees, to make no demand for changed conditions or increased wages, and to make no effort to change the open shop policy of the employer.

In 1882 the Lithgow Manufacturing Company of Louisville, Kentucky required its employees to agree not to "take part in any manner with any strike or labor disturbing movement."⁵⁰ The Trade Press Publishing Company of Milwaukee in 1921 included in its contracts a promise by the employee not to become a party to any strike or boycott.⁵¹ Similarly the shoe manufacturing establishment of Strout, Stritter and Company, Inc., of Lynn, Massachusetts in 1929 required of each employee a promise that "I will not take part in any strike or in any concerted cessation of work or in any effort or plan to hinder the conducting of your business."⁵² In the contract used by the Clinton Saddlery Company of Clinton, Iowa in 1910 appeared the provision that "No employe can unite with his fellow workers in any effort to regulate wages, hours, etc."⁵³ The Springfield Foundry Company included in its agreement with its employees this clause: "Factory Conditions: are accepted as satisfactory and will not be the subject of a controversy during my employment."⁵⁴ The La France Electrical Construction and Supply Company of Toledo, Ohio in 1920 adopted a yellow dog contract containing a promise by the employee to "take no action at any time designed or tending in any way to

⁵⁰ Iron Molders' Journal for the Month Ending March 31, 1882, p. 4.

⁵¹ Cornelius Cochrane, "Why Organized Labor is Fighting 'Yellow Dog' Contracts," 15 American Labor Legislative Review 230 (1925).

⁵² Shoe Workers' Journal, March, 1929, p. 15.

⁵³ Leather Workers' Journal, June, 1910, p. 511.

⁵⁴ Springfield Foundry Company v. Campbell, 3 Law and Labor 259 (Massachusetts, 1921).

unionize the employer's employees or to make its shop a closed union shop or any of its jobs closed union jobs."⁵⁵ Almost identical contracts were used by the Modern Pattern Works, also of Toledo, in 1920,⁵⁶ and by the Shell-Wolfe Company of Mansfield, Ohio in 1921.⁵⁷ The contract of the Farmington Shoe-Manufacturing Company also provided that the employee do nothing to change the open shop status of the employer.⁵⁸

In many instances two or more of these promises are incorporated into a single contract. The Moline Plow Company of Moline, Illinois, one of the first concerns to use a contract of this type, as early as 1901 required a pledge "to make no demand . . . for an increase of wages or shorter day than ten hours, nor to participate in any strike, nor to unite with other employees in any concerted action with a view to securing greater compensation."⁵⁹ Identical or almost identical contracts were still being used by Moline foundrymen as late as 1918.⁶⁰ The contract used in pattern making establishments in Boston, Massachusetts in 1920 contained these provisions:

Shop Conditions—By entering the company's employment I agree that the shop conditions are satisfactory and will not be the subject of any demand for a change during my employment.

Open Shop—I understand that open shop conditions will prevail and I agree while employed to do no act, whether within or without the shop, tending to alter or impair such conditions.⁶¹

Shoe factories in Lynn, Massachusetts were in 1925 using a contract in which the employee, after agreeing that factory conditions were satisfactory and would not be the subject of any demand for change, went on to promise, "I will not take

⁵⁵ Brief in support of motion to certify record, *La France Electrical Construction and Supply Co. v. Int. Brotherhood of Electrical Workers*, p. 15 (Ohio, 1923).

⁵⁶ *Pattern Makers' Journal*, March, 1920, p. 18.

⁵⁷ *International Molders' Journal*, July, 1926, p. 387.

⁵⁸ *Nolan v. Farmington Shoe-Manufacturing Co.*, 25 Fed. (2nd) 906 (1928).

⁵⁹ *Pattern Makers' Journal*, August, 1901, p. 6.

⁶⁰ *International Molders' Journal*, May, 1918, p. 353. See also *Iron Molders' Journal*, February, 1907, p. 124.

⁶¹ *Pattern Makers' Journal*, February, 1920, p. 20.

part in any strike, or in any concerted cessation of work, or in any effort or plan to hinder the conducting of your factory as an 'Open Shop' or as a 'Non-Union Shop,' and will do nothing, either directly or indirectly, tending to impair or alter such conditions."⁶² A contract widely used in the Ohio coal fields required the employee to promise "that he will not, while he is an employee of employer, make any effort amongst its employees to bring about the unionizing of employer's said mine or of any other mine owned, leased, or operated by the employer or the unionizing of any of employer's employees . . . and that he will not at any time foment, advocate, or take any part in any strike of employer's employees."⁶³

The consideration for the anti-union promise is employment, which, however, can almost invariably be terminated at the will of the employer. If the promise is made after the employment has begun there is as a rule no consideration moving to the employee at that time, though because the employment is at will, continued employment might be held to constitute as much consideration as employment in the first instance could have been. Sometimes promises are made by the employer in return, but with very few exceptions these are of the most shadowy nature. Thus the Hitchman Company agreed with its employees that it would run non-union,⁶⁴ and a similar promise was made by the Lillybrook Coal Company.⁶⁵ The Empire Hat Works of Chicago promised to operate non-union and not to "recognize nor have any dealing with any labor union,"⁶⁶ and Brownhill and Kramer, Inc., Philadelphia hosiery manufacturers, agreed that

⁶² Shoe Workers' Journal, October, 1925, p. 15.

⁶³ Among the companies using this form were the Boomer Coal and Coke Company, Rose Mines Operation; the Clarkson Coal Mining Company; the Youghiogheny & Ohio Coal Company; and the Atlantic Contracting Company. See Senate Hearings on Conditions in the Coal Fields of Pennsylvania, West Virginia, and Ohio (1928), pp. 704, 2256-2257, 2418-2419, and 3399.

⁶⁴ Hitchman Coal & Coke Company v. Mitchell, 245 U. S. 229, 263.

⁶⁵ Senate Judiciary Committee Hearings on the Confirmation of Parker (1930), p. 44.

⁶⁶ Ibid., p. 48.

they would "continue to run and operate their mill and plant as a non-union mill and plant and altogether independent of and without respect to any rules, regulations, wage demands or working conditions" demanded or sought to be imposed by any union.⁶⁷

The Pursglove Coal Mining Company agreed to "operate its said No. 2 mine open shop while the party of the first part is in its employment."⁶⁸ The contracts used by the La France Electrical Construction and Supply Company⁶⁹ and the Modern Pattern Works,⁷⁰ both of Toledo, Ohio, and by the Shell-Wolfe Company of Mansfield, Ohio⁷¹ contained this provision: "The employer shall, and hereby agrees to, maintain an open shop, employing union or non-union employes without discrimination during the continuance of said employe's employment under this agreement." The New England Fuel and Transportation Company agreed to employ only non-union men,⁷² the Alabama Fuel and Iron Company agreed not to employ any member nor deal with any official of the United Mine Workers of America,⁷³ and the George H. Ellis Company of Boston promised not to employ any member of a labor organization.⁷⁴ Both the Crowell Publishing Company of Springfield, Ohio⁷⁵ and the Oklahoma City building trades employers⁷⁶ agreed to operate independent of the union, without recognizing or having any dealings with any labor organization.

Several employers made promises of a somewhat different nature, yet without agreeing to do anything that they would

⁶⁷ Bill of Complaint, *Brownhill and Kramer, Inc. v. American Federation of Full-Fashioned Hosiery Workers* (1931), p. 29.

⁶⁸ Senate Hearings on Conditions in the Coal Fields of Pennsylvania, West Virginia, and Ohio (1928), p. 1252.

⁶⁹ Brief in support of motion to certify record, *La France Electrical Construction and Supply Co. v. Int. Brotherhood of Electrical Workers*, p. 15 (Ohio, 1923).

⁷⁰ *Pattern Makers' Journal*, March, 1920, p. 18.

⁷¹ *International Molders' Journal*, July, 1926, pp. 386-387.

⁷² Senate Hearings on Conditions in the Coal Fields of Pennsylvania, West Virginia, and Ohio (1928), p. 1896.

⁷³ *United Mine Workers' Journal*, December 1, 1920, p. 8.

⁷⁴ *3 Law and Labor* 193 (1921).

⁷⁵ *International Bookbinder*, May, 1925, p. 167.

⁷⁶ *Bridgemen's Magazine*, August, 1920, p. 414.

not have done had they not used a yellow dog contract. Thus the Bessemer Gas Engine Company of Grove City, Pennsylvania agreed "to employ second party, and to give him steady work at its regular scale of wages and in accordance with its said rules and regulations, so long and at such times as first party may have work for him to do."⁷⁷ The United Railways & Electric Company of Baltimore agreed "to pay the undersigned individual employe the wages as agreed upon from time to time" in the manner specified, and also to arbitrate all differences according to the machinery set up by the employer and its company union.⁷⁸ The Real Silk Hosiery Mills, Inc., of Indianapolis agreed "that it will provide means to train me and its other employees; that it will not lockout its employees in a body, nor refuse to employ competent men willing to abide by the terms of this agreement, nor discharge men wholly without cause, or otherwise violate any clause of this agreement."⁷⁹

In a few contracts a monetary consideration is stipulated, sometimes of a trivial and sometimes of a more substantial amount. In the contracts used by Brownhill and Kramer of Philadelphia⁸⁰ and by the United Railways and Electric Company of Baltimore the consideration was declared to be one dollar, in the former instance paid by the employer to the workman, and in the latter "each to the other paid." In both cases it was declared that other valuable considerations existed also. The Huntington and Broad Top Mountain Railroad and Coal Company, in one of the very few contracts in which a genuine consideration existed, promised to pay \$1000 to the dependents of any employee who was killed or totally disabled during the discharge of his duties.⁸¹ A contract used by a number of the West Virginia companies that participated in the Red Jacket case likewise contained a real

⁷⁷ International Molders' Journal, April, 1915, p. 292.

⁷⁸ From an original in the possession of the author.

⁷⁹ Senate Judiciary Committee Hearings on the Confirmation of Parker (1930), p. 50.

⁸⁰ Bill of Complaint, Brownhill and Kramer, Inc. v. American Federation of Full-Fashioned Hosiery Workers (1931), p. 29.

⁸¹ Railway Carmen's Journal, August, 1908, pp. 408-409.

consideration, the employer promising on December 24 of each year to pay to each workman who for at least six months prior to December 1 had been in its continuous employ a sum equal to two and one-half per cent of his gross earnings.⁸²

Since by far the greater number of the contracts are at will, they can be terminated whenever either party so desires, whether or not cause exists. Several employers have written into the contracts the power of unlimited discharge that the law gives them in the absence of a stipulation to the contrary. The New England Fuel and Transportation Company, for example, made each employee declare, "I also understand and agree that the company may discharge me at any time, thereby terminating this contract,"⁸³ and the contract of the Lincoln Traction Company provided that "this contract may be terminated on behalf of and by the said company and the said employee discharged on any day or at any hour by either written or verbal notice from the company, or its superintendent of transportation, without stating any cause for such discharge."⁸⁴ The Alabama Fuel and Iron Company promised that it would not discharge an employee without notice "except for insubordination, misbehavior, incompetency, violation of this agreement or other just cause."⁸⁵ Only in a contract for a definite period of time can the employee have any protection against discharge at the whim of the employer, and even in such contracts his protection is often more illusory than real. The Interborough Rapid Transit Company of New York made what purported to be a contract for two years' employment, but provided that discharges might be made for "incompetency, inefficiency, or carelessness in the performance of duty, or for intoxication or the use of alcoholic beverages, or for dishonesty, insubordi-

⁸² Among these companies were the Meadow Creek Coal Company, the Greenbrier Smokeless Coal Company, the Imperial Smokeless Coal Company, and the Nelson Fuel Company (contract no. 1).

⁸³ Senate Hearings on Conditions in the Coal Fields of Pennsylvania, West Virginia, and Ohio (1928) p. 1896.

⁸⁴ The Motorman and Conductor, February, 1918, p. 8.

⁸⁵ United Mine Workers' Journal, December, 1920, p. 8.

nation, or refusal or neglect or physical incapacity to perform his duty." In addition an employee could be discharged because he joined a union or because his services were no longer necessary.⁸⁶ As a result Judge Wasservogel observed that "Unlimited and practically unhampered power to discharge employees is given to the company."⁸⁷

In a few instances employees are required to join company unions, at the same time promising not to join the bona fide union in their industry. This procedure is rather unusual, for most of the companies that have their own unions either expressly grant the right to join outside unions or else say nothing about it.⁸⁸ In the case of the Interborough Rapid Transit Company of New York the promise not to join an outside union was at first contained only in the obligation undertaken by each employee upon joining the company union. The Court of Appeals of New York held, therefore, that the anti-union promise was merely a contract between the company union and the employee, and refused enforcement upon petition of the employer.⁸⁹ The company thereupon adopted a new employment contract in which the anti-union promise was made directly to it.⁹⁰ The Great Northern Railway Company required of each employee two pledges not to join an outside union, one in the application for employment and the other in the application for membership in the company union.⁹¹ The anti-union promise of employees of

⁸⁶ *International Rapid Transit Co. v. Green*, 227 N. Y. Supp. 258, 261-262 (1928).

⁸⁷ *Ibid.*, p. 262.

⁸⁸ Brief for Defendants, *Interborough Rapid Transit Co. v. Green*, pp. 59-61. Of twelve street railways having company unions that were investigated, only one, the Brooklyn Manhattan Transit Company, required an anti-union promise. Of a random sampling of forty-four company unions only two, the Brooklyn Manhattan Transit Company and the New Haven Railway System, bound their employees against membership in other associations.

⁸⁹ *Interborough Rapid Transit Co. v. Lavin*, 247 N. Y. 65, 159 N. E. 863 (1928).

⁹⁰ *Interborough Rapid Transit Co. v. Green*, 227 N. Y. Supp. 258 (1928).

⁹¹ Joseph A. Padway, "The Yellow Dog Contract is Outlawed in Wisconsin," in *American Federationist*, November, 1929, p. 1356, and pp. 1358-1359.

the United Railways & Electric Company of Baltimore is contained in a contract to which the employer, the company union, and the individual employee all are parties.⁹²

Some employers have required their employees to leave sums of money with them, to be forfeited by any worker who joined a union or participated in a strike in violation of his contract. In the case of the Great West Saddlery Company of Winnipeg and Calgary, Canada the forfeit amounted to six days' wages.⁹³ The contracts used by the Bessemer Gas Engine Company of Grove City, Pennsylvania,⁹⁴ and by Scott and Company, a Plainfield, New Jersey foundry,⁹⁵ each provided for the forfeit of at least one week's wages. The Kries Bros. Manufacturing Company, harness makers of Logansport, Indiana, retained fifty cents each week of each employee's pay over a period of three months, this sum to be forfeited if a union was joined.⁹⁶ The employees of the Hotel Astor of New York City agreed that all wages due them were to be forfeited as liquidated damages in the event that they joined a union or participated in a strike.⁹⁷ In some instances the sum subject to forfeit was quite considerable; the contract of the Washington and Old Dominion Railway fixed it at fifty dollars,⁹⁸ whereas in the case of the Lithgow Manufacturing Company of Louisville, Kentucky it was ten per cent of each molder's earnings over a period of nine months.⁹⁹

Not content with a mere promise not to join a union, certain employers have required their employees to make affidavit to that effect. As early as 1885 or 1886 one of the horse-railroad companies of New York City required its men to take an oath that they would not belong to any labor organiza-

⁹² An original of this company's contract is in the possession of the author.

⁹³ *Leather Workers' Journal*, January, 1912, pp. 177-178.

⁹⁴ *International Molders' Journal*, April, 1915, p. 292.

⁹⁵ *Iron Molders' Journal*, September, 1906, pp. 671-672.

⁹⁶ *Leather Workers' Journal*, November, 1899, p. 33.

⁹⁷ From an original in the possession of the author.

⁹⁸ *The Railroad Trainman*, October, 1920, p. 610.

⁹⁹ *Iron Molders' Journal* for the Month Ending March 31, 1882, p. 4.

tion.¹⁰⁰ The Pittsburg Steamship Company required a similar affidavit in 1908.¹⁰¹ The Mossberg and Granville Manufacturing Company of Providence, Rhode Island required an affidavit from each employee that he was not then a union member, though it was satisfied with a mere promise that no labor organization would be joined in the future, without the giving of thirty days' notice.¹⁰² A most unusual case was that of the Topeka Railway Company of Topeka, Kansas, which in 1912 forced its employees to make affidavits addressed "To the Officers of the Amalgamated Association of Street and Electric Railway Employes of America, the Topeka Railway Company and to the Citizens of Topeka," declaring their intention to withdraw from the union and to have nothing more to do with it.¹⁰³ Stearns, Hill and Company of Erie, Pennsylvania in 1873 required both a forfeit and an affidavit, the penalty in the event of a violation of the agreement to be the loss of all pay due at the time.¹⁰⁴ Similarly certain New York City cooperage firms in 1874 required, in addition to an affidavit, a deposit of fifty dollars subject to forfeit. In this case it was reported that each man was asked to what church he belonged, and was then made to take his oath on the Bible indorsed by that denomination.¹⁰⁵

In several instances the statement that the worker belongs to no union and will not join one comes as the answer to a question, in the application for employment. The iron-clad used in 1886 by Isaac Prouty and Company, shoe manufacturers of Spencer, Massachusetts, consisted of twenty questions, of which the sixteenth was: "Are you a member of any labor organization? Will you combine with us against

¹⁰⁰ George E. McNeill, "Miscellaneous Trades," in *The Labor Movement: The Problem of To-day*, p. 385.

¹⁰¹ *International Molders' Journal*, September, 1908, p. 640.

¹⁰² *Monthly Journal of the International Association of Machinists*, June, 1900, p. 308.

¹⁰³ *Motorman and Conductor*, February, 1913, p. 9.

¹⁰⁴ *Iron Molders' International Journal for the Month Ending July 31, 1873*, p. 47.

¹⁰⁵ *Ibid.*, Month Ending May 31, 1874, p. 33.

labor organizations?"¹⁰⁶ Similarly, two of the questions in the employment form used by the Pleasant Valley Coal Company of Utah in 1901 were: "Do you belong to any miners' union?" and "Would you join the miners' union if an attempt is made to organize one here?"¹⁰⁷ Applicants for employment as operators for the Postal Telegraph-Cable Company had to satisfactorily answer these questions in the employment form:

Are you a member of any telegrapher's union?

If so, do you agree, in case you are given employment by the Postal Telegraph-Cable Co. to resign your union membership, and also to refrain from joining any Union during the continuance of such employment; and also render full and faithful service at all times, to obey rules and instructions, refraining from all agitation and interference with the company's business, and to work carefully and well with every operator?¹⁰⁸

Most employments under yellow dog contracts are at will, the worker promising not to join a union so long as the employment relation continues. There are a number of instances, however, in which the employment and the promise run for particular periods of time, ranging from the week to week contracts of certain clothing establishments¹⁰⁹ to the four year contract of the Vail-Ballou Press, Inc.¹¹⁰ A year or two years is the period most frequently mentioned. It may prove advantageous to an employer to have a contract that runs for a stated period of time in that certain courts may be more likely to enforce it, on the ground that the certainty of employment is consideration sufficient to support the anti-union promise.¹¹¹ If, however, the employer

¹⁰⁶ Journal of United Labor, June 20, 1889, p. 1.

¹⁰⁷ United Mine Workers' Journal, March 21, 1901, p. 2.

¹⁰⁸ Senate Judiciary Committee Hearings on the Confirmation of Parker (1930), p. 48.

¹⁰⁹ Skolny v. Hillman, 187 N. Y. Supp. 706 (1921); Piermont v. Schlesinger, 188 N. Y. Supp. 35 (1921).

¹¹⁰ Vail-Ballou Press, Inc. v. Casey, 212 N. Y. Supp. 113 (1925).

¹¹¹ The New York courts have taken the lead in developing this doctrine, though even in that jurisdiction the question is still unsettled. Exchange Bakery & Restaurant, Inc. v. Rifkin, 245 N. Y. 260, 157 N. E. 130 (1927); Interborough Rapid Transit Co. v. Lavin, 247 N. Y. 65, 159 N. E. 863 (1928).

lists so many grounds of discharge that the contract, though it purports to be for a definite time, becomes virtually one at will, the courts will so treat it.¹¹²

A few employers, particularly in the West Virginia mining industry, compel their employees to sign contracts in which the benefits of non-unionism are set forth in glowing terms. One form widely used in that state forced each miner to declare that he would not join any union "because I believe the preservation of the right of individual contract, free from interference or regulation by others, and payment in proportion to service rendered to be to my interest, to the best interest of the public, and of all industry."¹¹³ Another form used quite frequently in the same area declared that

In order to preserve to each man the right to do such work as he pleases and for whom he pleases and the right to payment in proportion to service rendered, to preserve the natural and constitutional right of individual contract, to preserve to each individual the fruits of his own labor and to promote the interests of both parties hereto

the employer would not hire any union men and the employee would not join or encourage the organization of any union.¹¹⁴ The Carbon Fuel Company is responsible for one of the most unusual yellow dog contracts yet issued. The promise not to join a union appears with mining rules, rates of pay, and a number of other matters in a twenty page booklet, on the second page of which is printed the Golden Rule, "Do unto others as you would have others do unto you." On the reverse side of the cover appears this legend, "There is no surer tie between friends than where they are united in their objects and wishes"; and on the next to last page, following the contract proper, there is a little verse by Kipling entitled "Co-operation."¹¹⁵

¹¹² *Interborough Rapid Transit Co. v. Green*, 227 N. Y. Supp. 258 (1928).

¹¹³ Among the companies using this form of contract was the Red Jacket Consolidated Coal and Coke Company (Inc.). Senate Hearings on Conditions in the Coal Fields of Pennsylvania, West Virginia, and Ohio (1928), p. 1846.

¹¹⁴ The Island Creek Coal Company was one of the employers that used this form. *Ibid.*, p. 1950.

¹¹⁵ From an original in the possession of the author.

CHAPTER IV

THE EFFECT OF THE CONTRACT

Until the Hitchman decision, as has already been pointed out,¹ the only effect of the individual, anti-union contract was psychological, many workmen refusing thereafter to join the union because they did not wish to break their word, because they feared the displeasure of their employer, or because in their ignorance they did not understand that no legal penalty could follow the violation of their promise. In 1870, for example, the telegraphers in the employ of the Western Union Telegraph Company, following an unsuccessful strike, were forced to promise not to join any union thereafter. Five years later an attempt was made to establish a new union. "The telegraphers generally, however, . . . considered that they were morally bound to adhere to their pledges not to join any organization of their fellow-craftsmen, and the new union made slow progress."² In 1883 a second strike broke out, which like the first was unsuccessful; and, just as in 1870, the company insisted upon the signature of anti-union promises. Thereafter various efforts at reorganization were attempted, but the contracts "operated as a check against the re-formation of the union for the reason that most of those who signed it considered themselves morally obliged to abide by its terms."³

The more courageous workmen, needless to say, paid little attention to the contracts that had been forced upon them; and the more intelligent and more experienced men realized that the only penalty for joining a union was dismissal, which they necessarily risked whenever they joined a union, whether or not they had ever made a promise to the contrary. Even in those cases where the contract appears to have been effective in preventing the reestablishment of the union, it must

¹ See above, p. 26.

² Testimony of B. Frank Shrimpton before United States Commission on Industrial Relations. *The Commercial Telegraphers' Journal*, May, 1915, pp. 286-287.

³ *Ibid.*, p. 290.

always be borne in mind that the employer had shown himself powerful enough to break the strike, crush the union, and impose anti-union promises. We have therefore no way of knowing to what extent the employees' reluctance to rejoin a union was due to the promise, and to what extent it was due to the fear of antagonizing an employer who had proved himself a formidable opponent. Union organizers, of course, completely disregarded the contracts, and organized their signers with no more hesitation than in the case of other wage-earners.

Though since the Hitchman decision the yellow dog contract has been introduced primarily because of its legal effect, there is still evidence that it has some psychological influence as well. A hosiery worker who had attempted to do some organizing work among the employees of the Cambria Silk Hosiery Company of Philadelphia asserted that "a lot of the employees that I asked to join the union were afraid to do so because of the contract. Some of them were afraid that if they broke the contract they might be arrested or sued and have their homes taken away."⁴ In this case the majority of the employees were American born, and could read and write. Among foreign born workmen and among illiterates this fear would doubtless be much more prevalent. One student of the subject has expressed a similar opinion:

There is, however, undoubtedly, a psychological effect upon some employees, particularly the ignorant or illiterate worker, when he affixes his signature or his mark to a written agreement. He doesn't know what may not happen if he even incurs the displeasure of his employer. To him it might involve not only his being fired, but he might also be punished—perhaps fined and imprisoned; and when there is included in the individual contract a clause whereby the employee promises to have no dealings or talks with any one in regard to union matters, the employer, playing upon the fears and apprehensions of the ignorant man, finds that such contracts assist, perhaps to a very marked degree, in not only keeping the union out, but keeping the union at a distance. The more educated or intelligent worker possibly understands that such a contract leaves him as legally free as before to become a union man if he desires to do so, although, if he does join, he has agreed to quit that particular job.⁵

⁴ Interview with John Fisher, September 16, 1931.

⁵ Cornelius Cochrane, "Why Organized Labor is Fighting 'Yellow Dog' Contracts," 15 *American Labor Legislative Review*, pp. 227-228 (1925).

The testimony of other union organizers is that in their experience the contract has had little, if any, effect upon those who signed it, and that in those cases where workmen cited the anti-union promise as their reason for not joining the union it was probably not the real reason. In the West Virginia coal fields, where the contract is most widely used, it appears to have no psychological effect at all. The opinion of a prominent union leader in this area is that "not one-half of one per cent of the miners in West Virginia who sign the yellow dog contract have the slightest intention of ever living up to it."⁶ The great majority of the 8,000 miners who participated in the strike called by the West Virginia Mine Workers in July, 1931, did so in violation of their promises. Several pickets, indeed, were told by men who continued to work that they could not join the strike because they had signed yellow dog contracts, but the union sympathizers all agreed that this was a mere excuse, and that those men would have been strikebreakers in any event.⁷ A hosiery worker who was in the employ of Brownhill and Kramer, Inc. at the time a strike was declared likewise asserts that the contract had no effect upon the employees. "When a strike was called on February 16, 1931, about ninety per cent of the employees walked out. The contract had no effect at all, for the ten per cent who worked would have worked anyway."⁸ In this case the attitude of foreign born and of native workers towards the contract was about the same, most of each group striking while some of each remained at work.

The League for Industrial Rights, in advising employers to adopt individual contracts, emphasized the fact that the contracts would serve as a defense to workmen who did not wish to join a strike. The individual contracts recommended

⁶ Interview with Brant A. Scott, vice-president of the West Virginia Mine Workers, July 28, 1931.

⁷ The author spent two weeks in the mining camps while the strike was in progress, and discussed this point with many of the union people.

⁸ Interview with Chester Frank, September 17, 1931.

by the League did not contain an anti-union promise, but the argument used is nevertheless applicable.

Such a contract . . . has often a moral value among a great many workmen and serves them as a defense when they do not want to quit work in response to the entreaties of a labor leader. There are many workmen who feel the obligation to carry out their promises and there are still a larger number, who, being desirous of continuing at work and also desirous to avoid offense to labor leaders, like to lean on the contract as a reason why they do not quit work.⁹

The yellow dog contract is never introduced with the intention of affecting in any way the legal relations between the employer and the employee. What is sought is a psychological effect upon the employee and, since the Hitchman case, a legal effect upon the union. Of the sixty-odd cases in which employers have resorted to court action to protect their rights under anti-union contracts, in not a single one has a remedy been sought against the employee who had signed and violated the contract. In every instance the defendant was the person or the organization that had tried to persuade the employee to join the union, in violation of the contractual obligation. The reasons that no suit is ever filed against the violator of a yellow dog contract are: first, that no court would compel anyone to remain at work against his will, since this would be involuntary servitude; secondly, that the amount of damage suffered by the employer because of the breaking of the contract is so trivial that it would be foolish to go through expensive litigation to collect it; and thirdly, that even were the amount considerable a judgment at law would in most instances be valueless, since the defendant would seldom have any property that could be taken in payment.¹⁰

What the employer is really interested in, and what has given the yellow dog contract its importance, is the fact that an injunction will issue to restrain union organizers from attempting to persuade the signers of the contract to join a

⁹ Law and Labor, August, 1919, p. 3.

¹⁰ For an admission from a source sympathetic to employers that the contracts are valueless as against the employees see Law and Labor, August, 1919, p. 3.

union, on the ground that this constitutes an unwarranted interference with a contractual relationship. It is true, of course, that injunctions can be obtained against union leaders on other grounds, and that only a minority of labor injunctions are based upon yellow dog contracts.¹¹ Nevertheless the contract is a particularly important source of the injunction, because an injunction can be secured more easily in this fashion, because the threat of injunction is more effective if based upon such a contract, and because the injunction when secured is more drastic.

If an employer who desires an injunction does not have a yellow dog contract in force, he must prove either that the purpose of the strike is illegal or that certain unlawful acts, such as intimidation, threats, violence, and the like, have occurred and are likely to be repeated unless restrained by the court. If the latter, a long line of affidavits reciting these facts is usually submitted in support of the bill of complaint, involving a not inconsiderable expenditure of time and money. Moreover, the application is as a rule attended by some uncertainty, for opposed to the affidavits of the complainant is often marshalled an equally long and equally imposing array of affidavits for the defendants, denying every allegation in the complainant's affidavits.¹² If a yellow dog contract has been signed by the employees, however, it is not necessary for the employer to wait until disorder, threats, and similar acts have occurred before filing suit for an injunction; and when a suit is filed he need merely prove that individual, anti-union contracts existed, and that attempts were made to

¹¹ Witte, a most careful student of the injunction, asserts that less than ten per cent of the labor injunctions since the Hitchman case have been based on yellow dog contracts, observing, however, that in several of the yellow dog cases a large number of employers have acted jointly. Edwin E. Witte, *The Government in Labor Disputes* (1932), p. 224.

¹² Felix Frankfurter and Nathan Greene, *The Labor Injunction* (1930), pp. 68-71. In the case of *Arnheim v. Hillman*, 198 App. Div. 88 (New York, 1921), fifty-two affidavits were presented by the complainant and fifty-four by the defendants. "Each sworn allegation and every specific incident of disorder were controverted by detailed denial, sworn to with equal solemnity." Frankfurter and Greene, p. 71.

persuade their signers to violate them. A labor leader who has had a great deal of experience with yellow dog contracts and injunctions agrees that the contract makes the path to the injunction easier. "The yellow dog contract gives the companies the best grounds to go into court to get an injunction. Otherwise they must wait for some special grounds, such as violence, or interference with the men who want to work."¹³

It is because an injunction can be secured quite easily on the basis of yellow dog contracts that the threat of injunction is so effective. Union leaders, realizing that the courts would almost certainly issue the injunction as prayed, and anxious to avoid expense and possible convictions for contempt in what would almost certainly be a losing fight, have in many instances ceased efforts to organize when an injunction was threatened. "The trade union movement in general has tried to organize yellow dog contract signers, but in most cases, upon the receipt of letters threatening injunctions, attempts to organize were abandoned upon advice of attorneys."¹⁴

The letters threatening injunctions have usually been sent to the officers of the union by the attorneys for the employer. One such letter, sent to the head of the molders' union by the lawyers representing the Elmwood Casting Company, read as follows:

Dear Sir:

We are attorneys for the Elmwood Casting Company, Murray Road, St. Bernard, O., and it has been called to our attention that an effort is being made to persuade and induce the employees of said foundry to become members of the International Iron Molders' Union.

We are also informed that the International Iron Molders' Union of North America, and you, as one of its officers, are engaged in this effort.

The purpose of this letter is to notify you that all of the employees of the Elmwood Casting Company have accepted employment under written contract and agreement with the company that the shop is being operated . . . non-union . . . ; that . . . while employed by

¹³ Interview with Brant A. Scott, vice-president of the West Virginia Mine Workers, July 28, 1931.

¹⁴ Interview with John P. Frey, secretary-treasurer, Metal Trades Department of American Federation of Labor, November 2, 1931.

such company, the employee will not become a member of any labor union. . . .

A recent decision of the United States Supreme Court in the case of the Hitchman Coal & Coke Company has held that an employer . . . may legally have a contract with his employees that they are non-union and will so continue while in his employment, and that the officers and agents of labor unions . . . may be enjoined from soliciting such employees for membership in the union. . . .

If, as has been reported, you have engaged in any way directly or indirectly in endeavoring to persuade the employees of the Elmwood Casting Company to join a union and thus violate their contract with their employers, you fall within this decision, and unless you discontinue such action, the company will proceed to protect its legal rights as outlined in the case above referred to. We enclose herewith formal notice, duly signed, by the Elmwood Casting Company, notifying you that its employees have agreed in writing as a basis of their employment that they are not members of any labor union, and that during the period of their employment will not become such members, as hereinafter stated.¹⁵

Letters similar to this have usually been sent as a warning, and it is only when the notice is disregarded and organizing efforts continued that suit for an injunction is filed.

Whether or not a union has ceased efforts to organize upon receipt of a letter threatening an injunction depends upon the advice of its attorneys, its financial condition, and the fighting spirit of its officers. To a weak, struggling union, unable to provide ample strike benefits to its members, the threat of expensive litigation may well prove very effective indeed, and lead it to concentrate its efforts in those plants where the basis for legal action is more difficult to secure. The cautious manner in which some union organizers approach the problem of organizing yellow dog contract signers is well illustrated by a report of a representative of the American Flint Glass Workers' Union, dealing with the anti-union concern of Aladdin Industries, Incorporated: "This company also has enforced in its factory the 'Yellow Dog Contract,' which means, of course, that we can not take those glassworkers in the union while they are in the employ of said company, so we must be careful how we proceed in dealing with this matter."¹⁶ In a somewhat similar spirit is the testimony of

¹⁵ Testimony of John P. Frey before Committees of the Ohio House and Senate, March 3, 1925. *International Molders' Journal*, April, 1925, pp. 195-196.

¹⁶ Report of National Representative Joseph O'Malley in Circular, *American Flint Glass Workers' Union*, April 25, 1929, p. 3281.

one of the former leaders of the molders: "The International Molders' Union attempted to organize men who had signed yellow dog contracts the same as the others, but after receiving letters threatening injunctions they let the plants alone."¹⁷

That the whole of the American labor movement has not been as cautious as this is witnessed by the number of suits for injunction based on yellow dog contracts, every one or almost every one of which represents a case in which a warning to cease organizing was received and ignored. In fairness to the molders and the flint glass workers it must be said that both have fought and lost yellow dog contract cases, and that the knowledge of those defeats may and probably does account for their reluctance to undergo a similar experience.

In industries in which the yellow dog contract is widely used the union necessarily pays little attention to it, for to respect it would mean to abandon all attempts to organize. The West Virginia Mine Workers, for example, was established in the Kanawha field of West Virginia at a time when the overwhelming majority of the miners whom it sought to organize were working subject to yellow dog contracts. Shortly after the formation of the union, and just two days before a strike was scheduled to begin, the officers of the union received from the president of the Carbon Fuel Company a letter which in part said:

I enclose a copy of an agreement between the Carbon Fuel Company and its employees, to which all persons now in the employ of the Company are parties. . . . Please be advised that if any attempt is made to induce the employees of the Carbon Fuel Company, or any of them, to strike or otherwise violate the terms of said agreement, the Company will take all lawful steps to protect its contract, its men and its business, and to obtain redress from the parties responsible for any damages suffered.¹⁸

The union leaders were not the least bit worried by this threat. "We got that letter," said one, "and we just laughed. We thought it was a big joke. Eighty per cent of the men

¹⁷ Interview with John P. Frey, secretary-treasurer, Metal Trades Department of American Federation of Labor, November 2, 1931.

¹⁸ The author was shown this letter at the headquarters of the union.

now on strike had signed yellow dog contracts. Our organizers pay no attention to house leases, yellow dogs, or anything like that."¹⁹

Injunctions issued in labor disputes have often been very drastic, whether or not they were based on yellow dog contracts.²⁰ In the cases not so based, however, peaceful persuasion of strikebreakers to join the union is usually not prohibited, though the right to picket may be carefully defined and limited.²¹ In the injunctions based on yellow dog contracts it is this peaceful persuasion that is expressly enjoined, for the essence of the offense is the persuasion of employees to violate their anti-union contracts. The distinctive feature of the yellow dog injunction is, therefore, the inclusion of persuasion along with threats, intimidation, violence, and abusive language in the catalogue of prohibited acts.

The difference between the scope of the ordinary injunction and one based upon a yellow dog contract was borne out strikingly in a case in which most but not all of the employees had signed anti-union promises. In its opinion the court said:

We do not consider . . . that it is unlawful for the union to use peaceful persuasion for the purpose of inducing those of the plaintiff's employes who have not signed the non-union agreement, or verbally agreed to its terms, to quit their employment and join the labor movement.

But to induce another to breach his contract has never been held to be justified by either social or individual advantage. No guaranteed right of free speech or liberty of action has ever been held to authorize or justify one man in inducing another to break his contract.

¹⁹ Interview with Brant A. Scott, vice-president of the West Virginia Mine Workers, July 28, 1931.

²⁰ For a discussion of representative labor injunctions see Felix Frankfurter and Nathan Greene, *op. cit.*, pp. 89-105.

²¹ Since the United States Supreme Court in the case of *American Steel Foundries v. Tri-City Central Trades Council*, 257 U. S. 184, 42 Sup. Ct. 72 (1921), permitted a single picket at each entrance of the plant for purposes of peaceful persuasion, peaceful picketing has been allowed in almost every case in this country in which yellow dog contracts were not involved, provided that the purpose of the strike was not adjudged unlawful. Most of the state courts, though they are not bound to, follow the statement of law and the regulations governing picketing announced in Chief Justice Taft's opinion in the *Steel Foundries* case. Before 1921 opinion was

The injunction issued therefore prohibited the unions from attempting to persuade those employees who had signed yellow dog contracts to break them, but permitted the pickets to persuade any employees who had not signed them to join the strike, and also to persuade prospective employees to remain away.²² The difference was also clearly brought out by an injunction secured by the Youghiogeny & Ohio Coal Company, one paragraph of which was as follows:

Pickets on duty at their respective posts may peacefully observe, communicate with, and persuade persons, but shall not make use of abusive or threatening language. The peaceful persuasion herein referred to is peaceful persuasion directed toward one who is not known to be an employee, in the effort to keep him from becoming an employee, or directed toward one who is an employee in the effort to induce him to terminate his relation of employment upon the expiration of any employment contract he may be under, but does not include peacefully persuading one to break an existing employment contract.²³

In order to avoid giving cause for an injunction unions have in several cases instructed pickets to have nothing to do with the signers of individual contracts. In one case, for example,

The pickets were instructed to observe the law at all times, and that when they accosted a man, to find out first if he worked in the plant, and if he did so, to inquire if he had signed the individual contract, and if he said "No," to use peaceful persuasion; but if he said he had signed one of the contracts, to have no more to do with him.²⁴

For the reasons mentioned the yellow dog contract is a most important source of the labor injunction, resorted to more and more frequently by employers and hated more and more bitterly by their employees. Its place in the labor struggle, which depends, as we have seen, upon its legal effect, is today uncertain, for the law is in a state of flux. Whether

divided, the majority of the states permitting peaceful picketing, and the minority holding that all picketing was unlawful. See Edwin E. Witte, *op. cit.*, pp. 33-38.

²² *O. J. Schafer v. Int. Pattern Makers League*, 2 Law and Labor 188, at pp. 190-191 (1920).

²³ Testimony of S. H. Robbins, president of the company, in Senate Hearings on Conditions in the Coal Fields of Pennsylvania, West Virginia, and Ohio (1928), p. 708.

²⁴ *Springfield Foundry Co. v. Campbell*, 3 Law and Labor 259, 260 (Massachusetts, 1921).

or not the United States Supreme Court will hold constitutional the federal act declaring the yellow dog contract unenforceable, and issue or refuse an injunction in the next yellow dog case to come before it, and whether or not other states will follow the lead of New York in refusing to enforce the contract at common law, are questions that remain for the future to answer. At this moment it is only possible to picture the struggle between the giant forces of capital and labor for the continuance or the abolition of this weapon that the one has found so powerful, and the other learned to hate and despise. Upheld by employers as a bona fide contract deserving of legal protection just as any other contract, and attacked by labor as a sham agreement forced on helpless employees by the superior economic power of the employer, the yellow dog contract remains today the most controversial subject in the bitterly contested field of labor relations.

APPENDIX

REPRESENTATIVE TYPES OF YELLOW DOG CONTRACTS

I. HITCHMAN COAL AND COKE COMPANY

I am employed by and work for the Hitchman Coal and Coke Company with the express understanding that I am not a member of the United Mine Workers of America, and will not become so while an employee of the Hitchman Coal and Coke Company; that the Hitchman Coal and Coke Company is run non-union and agrees with me that it will run non-union while I am in its employ. If at any time I am employed by the Hitchman Coal and Coke Company I want to become connected with the United Mine Workers of America, or any affiliated organization, I agree to withdraw from the employment of said company, and agree that while I am in the employ of that company I will not make any efforts amongst its employees to bring about the unionizing of that mine against the company's wish. I have either read the above or heard the same read.

II. EMPIRE HAT WORKS

The undersigned hereinafter referred to as employee, in accepting and/or continuing in employment with _____ hereinafter referred to as employer in _____ place of business at _____ Chicago, Cook County, Ill., and in consideration of said employee being employed by said employer and in consideration that this employer does and will continue to operate said place of business on the nonunion basis, does so upon the understanding and agreement with said employer as follows:

(1) That said employer is operating and will continue to operate upon the nonunion basis and as nonunion.

(2) That said employer will not recognize nor have any dealing with any labor union.

(3) That said employee is not a member of any labor union, that while employed by said employer he will not become a member of any labor union, and will have no dealings, communications, or interviews with the officers, agents, or members of any labor union in relation to membership by said employee in such labor union, or in relation to said employee's said employment.

(4) That it is the intention and desire of said employer and employee that the employment relation between them be kept entirely free from interference or intervention in any respect by any labor union, its officers or agents.

Employee's Name.....,
Address.....

III. NELSON FUEL COMPANY (Contract No. 1)

This Agreement, made and entered into this _____ day of _____, 19—, between the Nelson Fuel Company, a corporation, employer, of the first part, and _____ of the second part, employe.

Witnesseth:

That the said Coal Company hereby agrees to pay unto the said party of the second part, on the 24th day of December each year during the continuance of this agreement, a sum of money equal to two and one-half per cent ($2\frac{1}{2}\%$) of the gross earnings of the party of the second part that were earned in the employ of the said Company during the year or portion of the year prior to December 1st of the current year. It is provided, however, that the party of the second part shall have been in the continuous employ of said Coal Company not less than six (6) months prior to December 1st of the year in which such payment is to be made; excepting that for the year 1921 the said Coal Company agrees to make such payment to the said party of the second part in case he shall have been in the continuous employ of the Company from September 1st and until December 1st of the said year. The percentage shall be calculated on the gross earnings of the party of the second part up to December 1st of the year in which such payment is to be made; and it is understood that if the party of the second part is not in the employ of the Company on December 24th of any year and has not been in the continuous employ of the Company prior to December 1st of such year for the length of time above set forth, then the party of the second part shall not be entitled to this payment or any part thereof.

For and in consideration of the above payment to be made and the promises and agreements herein, the party of the second part agrees to work diligently and continuously for the Company and to protect the property of the Company from injury and destruction as far as is consistent with personal safety; and the party of the second part further agrees that if any difference or dissatisfaction arises between himself and the Company from any cause, to adjust any and all differences with the Superintendent of the Company, if that be possible; but if the parties hereto fail to adjust such differences, then the party of the second part agrees to peaceably leave the employ and vacate the premises of the Company within a period of five days from the date of the arising of such differences.

In further consideration of the premises, the said Company agrees to operate its said mines as non-union mines, and the second party agrees not to become a member of the United Mine Workers of America or any of its affiliated organizations, or to directly or indirectly engage in, aid or abet the unionization or attempted unionization of such mines; and a violation of this covenant by him shall terminate his employment with the Company; but nothing herein contained shall be construed as intending to prevent or hinder the second party from terminating employment, and after so doing and vacating the premises of said Company, to join or become a member of the aforesaid organization or any lawful body.

Upon the termination of the second party's employment with the Company, the Company's obligations under this agreement shall immediately terminate.

Witness the following signatures:

NELSON FUEL COMPANY,

By _____
Superintendent

Employee.

Witness:

IV. ALABAMA FUEL AND IRON COMPANY

Employment Contract

Alabama Fuel and Iron Company, hereinafter called the employer, hereby employs _____, hereinafter called employee, and said employee contracts to work for said employer upon the following terms and conditions:

1. Employee agrees to work for employer at its _____ mines, _____ division, and employer agrees to pay the employee for his services at the rate of pay that is paid by the employer during the term of the employment at said mines to workmen of the same class as is the employee, and agrees that until April 1, 1922, said rate of pay shall not be less than that fixed in the recommendation of the Bituminous Coal Commission, which became effective on the first day of April, 1920.

2. It is understood that it is the mutual desire of employer and employee that the operations of the employer be conducted upon a nonunion basis, and that no member of the United Mine Workers of America or other affiliated labor organizations be employed therein.

3. The employer agrees that he will not knowingly employ or retain in his employment any member of the United Mine Workers of America, or other affiliated labor organization, during the period of this agreement; and the employer further agrees that it will deal directly with its own employees and not with the officials or representatives of the United Mine Workers of America, or other affiliated labor organization, in the settlement of disputes or controversies arising out of this employment.

4. The employee represents and agrees that during his employment with the employer he will not become a member, or agree to become a member, of the United Mine Workers of America or other affiliated labor organization, and will not subject himself in any way to the influence or control of the United Mine Workers of America, or other affiliated labor organization, or any of its officers or agents, and will not join, or agree to join, in any strike called against his said employer by the United Mine Workers of America, or other affiliated labor organization.

5. The employer agrees that he will not discharge the employee

except for insubordination, misbehavior, incompetency, violation of this agreement or other just cause, except upon 10 days' written notice, or the payment of 10 days' wages.

6. The employe agrees that he will not quit the service of the employer except upon 10 days' written notice.

This, the _____ day of _____, 1920.

ALABAMA FUEL AND IRON.

By _____
(Employer)

and _____
(Employee)

V. NATIONAL EQUIPMENT COMPANY

Application for Employment

I apply to the National Equipment Company for employment as _____ and if employed, agree that such employment will be upon the following terms and conditions:

Wages: _____.

Hours of Labor: To be arranged as employer may deem expedient, not exceeding _____ in any one day and not exceeding _____ in any one week.

Overtime: To be optional, for which time and a half will be paid.

Factory conditions are accepted as satisfactory and will not be the subject of a controversy during my employment, though suggestions for improvement will be welcomed by employer.

I understand that employment is upon a strictly non-union basis and I agree that while retained in employment I will not be or become a member of any trade union. That if I hereafter apply for membership in any trade union I will at once notify my employer, who may thereupon terminate my employment. That upon termination of my employment for any reason, I will not in any manner annoy, molest or interfere with the business, customers, or employees of said employer.

VI. ISLAND CREEK COAL COMPANY

In order to preserve to each man the right to do such work as he pleases and for whom he pleases and the right to payment in proportion to service rendered, to preserve the natural and constitutional right of individual contract, to preserve to each individual the fruits of his own labor and to promote the interests of both parties hereto

Island Creek Coal Co., employer, and _____ employee, agree as follows:

That so long as the relation of employer and employee exists between them, the employer will not knowingly employ, or keep in its employment, any member of the United Mine Workers of America, the I. W. W., or any other labor organization, and the employee will

not join or belong to any such union or organization and will not aid, encourage, or approve the organization thereof, it being understood that the policy of said company is to operate a nonunion mine, and that it would not enter into any contract of employment under any other condition; and if and when said relation of employer and employee, at any time and under any circumstances, terminates, the employee agrees that he will not then or thereafter, in any manner molest, annoy, or interfere with the business, customers, or employees of the employer, and will not aid or encourage anyone else in so doing.

Witness the following signature, this _____, 192—.

ISLAND CREEK COAL CO.

By officer or agent: _____

Employee: _____

Witness: _____

VII. LA FRANCE ELECTRICAL CONSTRUCTION AND SUPPLY CO.

Agreement of Employment

Toledo, Ohio, _____, 1920.

It is hereby agreed between _____, as employer, and the undersigned, as employee, in consideration of the mutual obligations of the parties hereunder, that said employee, from and after the date hereof, is employed by said employer upon the following terms and conditions.

1. As a _____ in the employ of the employer at a minimum wage of _____ cents per hour, eight hours to constitute a day's work, and forty-four hours to constitute a week's work. . . .

2. The employment of said employee under this agreement shall continue until either the employee or the employer shall have given the other two days' written notice of his intention to terminate it, except in the case of misbehavior or incompetency of the employee which shall be ground for an immediate termination of the employment by the employer. In case of any termination of employment or cessation of work by the employee for any reason, said employee agrees that he will not then or thereafter, in any manner, at any place, annoy, molest, or interfere with the business, customers, or employees, or prospective customers or employees, of said employer, or with the members of the families of any such customers, employees, or prospective customers or employees, and that he will not attempt to persuade or coerce others in refusing to work for or deal with said employer.

3. The employer shall, and hereby agrees to, maintain an open shop, employing union or non-union employees without discrimination, during the continuance of said employee's employment under this agreement, and the undersigned employee shall, and hereby agrees that he will, take no action at any time designed or tending in any way to unionize the employer's employees, or to make its shop a closed union shop, or any of its jobs closed union jobs.

4. The rules and regulations of the employer, not in conflict here-

with, as posted upon its bulletin board from time to time, shall become and are hereby made a part of this agreement.

By _____

Employee

VIII. LYNN, MASSACHUSETTS SHOE FACTORIES

Application for Employment

To the _____, 192—.
Shoe Co.,
Lynn, Mass.

I hereby apply for employment as _____ and in consideration of employment by you, I agree that;—

1.—I will perform all work assigned to me in a good and workmanlike manner to the best of my ability and will comply with such rules as you may put into effect for the conduct of your business, you to have the sole right to arrange working hours, to apportion and distribute the work in such manner as you may see fit, I hereby agreeing that factory conditions are satisfactory, and will not be the subject of any demand for change.

2.—I will not take part in any strike, or in any concerted cessation of work, or in any effort or plan to hinder the conducting of your factory as an "Open Shop" or as a "Non-Union Shop", and will do nothing, either directly or indirectly, tending to impair or alter such conditions.

3.—My employment may be terminated by you or by me upon and by written notice (notice to me to be sufficient if mailed to my address given below).

4.—In case my employment is terminated, I will for one year thereafter, in no way annoy, molest or interfere, directly or indirectly, with your customers' property, business or employees.

I hereby certify that I have carefully read the foregoing, and this application forms the basis of employment, and when accepted by the _____ Shoe Company, becomes the sole contract of employment in said Company.

Witness

Applicant

Residence:

Street _____

City _____

State _____

Accepted for the Company by: _____

Date _____, 192—.

INDEX

- Adair v. United States, 22, 23, 24.
Alabama Fuel and Iron Company, 59, 61, 68, 70, 89, 90.
Aladdin Industries, Incorporated, 44, 58, 82.
Alfrey Heading Mills, 40, 56.
Allied Manufacturers' League, Inc., 47, 48, 52.
Amalgamated Association of Street and Electric Railway Employees, 73.
Amalgamated Clothing Workers, 40.
American Federation of Labor, 33, 34, 47, 57, 64.
American Federation of Teachers, 56, 57.
American Flint Glass Workers' Union, 54, 64, 82.
"American Plan," 29, 30.
American Railway Union, 19.
American Steel Foundries case, 33, 84.
Andrews, John B., 32.
Askew Saddlery Company, 54.
Atlantic Contracting Company, 67.
Bessemer Gas Engine Company, 69, 72.
Boomer Coal and Coke Company, 67.
Borderland Coal Company, 30.
Brandeis, Justice, 54.
Brooklyn Manhattan Transit Company, 71.
Brotherhood of Railroad Trainmen, 18.
Brotherhood of Teamsters and City Front Federation, 39.
Brownhill & Kramer, Inc., 49, 52, 64, 67, 69, 78.
Builders' Association, 46.
Business Men's League, 20, 46.
Cambria Silk Hosiery Company, 52, 57, 77.
Carbon Fuel Company, 75, 83.
Central Conference of American Rabbis, 47.
Chamberlain, Joseph P., 32.
Chicago Heights Auto Dealers' Association, 46, 60.
Chipman Knitting Company, 57, 58.
Cigarmakers' Union, 56, 60.
Cigar-Manufacturers' Union, 56.
Clarkson Coal Mining Company, 67.
Clayton Act, 33.
Clinton Saddlery Company, 65.
Coeur D'Alene, 40.
Combination Laws, 12.
Commission on Industrial Relations, 21.
Contractors' Association, 48.
Coopers' International Union, 40.
Coppage v. Kansas, 23, 24, 56.
Crackerjack Company, 50.
Crowell Publishing Company, 59, 68.
Cyrus Currier and Sons, 42, 49.
Day, Justice, 24.
Dowling, Noel T., 32.
Drayman's Association, 39.
Dunbar Flint Glass Company, 40, 54, 58.
Duplex Printing Press Co. v. Deering, 33.
Eagle Glass Company, 20.
Elmwood Casting Company, 81, 82.
Empire Hat Works, 67, 87.
England, 12, 13, 14, 15.
Erdman Act, 22.
Excelsior Manufacturing Company, 59.
Exchange Bakery & Restaurant, Inc., 59; case of (Exchange Bakery & Restaurant, Inc. v. Rifkin), 34, 37.
Farmington Shoe-Manufacturing Company, 66.
Federal anti-yellow dog contract bill, 35, 36, 37, 38, 86.
Federal Council of the Churches of Christ in America, 47.

- Federal Glass Company, 20.
 Federated Shop Crafts, 42.
 Fentress Coal Company, 57.
 Fess, Senator, 36.
 Fillmore Avenue Foundry and Iron Works, 62.
 Fisher, John, 52, 77.
 Flaccus v. Smith, 26.
 Floersheimer, 49.
 Frank, Chester, 52, 78.
 Frey, John P., 51, 81, 82, 83.

 General Electric Company, 25.
 George H. Ellis Company, 43, 49, 59, 61, 68.
 Goldfield Consolidated Mines Company, 46.
 Goldfield Miners' Union No. 220, 46.
 Gompers, Samuel, 27.
 Grand National Consolidated Trades Union, 13.
 Great Northern Railway Company, 71.
 Great Vacation, The, 17.
 Great West Saddlery Company, 20, 63, 72.
 Greenbrier Smokeless Coal Company, 59, 70.

 Hatfield-Campbell Creek Coal Company, 51.
 Havemeyers and Elder, 16.
 Hayes, Marion, 52.
 Hitchman Coal and Coke Company, case of (Hitchman Coal and Coke Co. v. Mitchell), 25, 26, 82; contract of, 54, 55, 57, 61, 87; contract followed by other employers, 56, 57, 58, 59; decision not followed in New York, 34; distinguished from Red Jacket case, 33; effect of decision, 27, 28, 33, 36, 79; events preceding introduction of contract, 42; number of employees, 49; use of doctrine against employers, 37.
 Hoover, President, 36.
 Hosiery workers, 34.
 Hotel Astor, 52, 72.
 Hughes, A. C., 40.
 Huntington and Broad Top Mountain Railroad and Coal Company, 69.

 Imperial Glass Company, 64.
 Imperial Smokeless Coal Company, 59, 70.
 Industrial Independent, 20.
 Injunction, effect of yellow dog contract upon, 79, 80, 81.
 Interborough Rapid Transit Company, 48, 70, 71; case of (Interborough Rapid Transit Company v. Lavin), 34, 37.
 International Association of Bridge, Structural and Ornamental Iron Workers, 46.
 International Association of Machinists, 39.
 International Iron Molders' Union, 81; (same as) International Molders' Union, 83.
 International United Brotherhood of Leather Workers on Horse Goods, 20.
 Isaac Prouty and Company, 73.
 Island Creek Coal Company, 61, 75, 90, 91.
 I. W. W., 63.

 Jacksonville agreement, 43, 44.
 J. D. Boone Coal Company, 58.
 John Douglas Company, 41, 49.
 Jones, Senator, 36.

 Kanawha mining district, 41, 83.
 Kennecott Copper Corporation, 28, 64.
 Knights of Labor, 17.
 Knights of St. Crispin, 16, 17.
 Knowles, Taylor and Knowles, 60.
 Kraemer Hosiery Company, 47, 52, 53.
 Kries Bros. Manufacturing Company, 59, 72.

 La France Electrical Construction and Supply Company, 65, 68, 91, 92.
 League for Industrial Rights, 28, 78.
 Lillybrook Coal Company, 67.
 Lincoln Traction Company, 70.
 Lippencott Glass Company, 44.
 Lithgow Manufacturing Company, 65, 72.
 Lockie Fire Creek Coal Company, 61.

- Louisville and Nashville Railroad Company, 22.
 Lumley v. Gye, 15, 26.
 Macbeth-Evans Glass Company, 21.
 MacDonald, Horace L., 48, 52, 53.
 Margarett Coal Company, 61.
 Maxey, Justice, 34.
 Meadow Creek Coal Company, 59, 70.
 Merchant Ladies' Tailors' Society, 46, 62.
 Micajah-Pocahontas Coal Company, 57.
 Middishade (Inc.), 58.
 Millfay Manufacturing Company, 40.
 Minneapolis, St. Paul and Sault Ste. Marie Railway Company, 62.
 Mitchell Bros. Company, 49, 60.
 Modern Pattern Works, 66, 68.
 Moline Plow Company, 19, 66.
 Moore Drop Forging Company, 39, 43, 49, 62.
 Morrow, J. D. A., 44.
 Mossberg and Granville Manufacturing Company, 39, 62, 73.
 Nashville, Chattanooga and St. Louis Railway, 42.
 National Association of United Trades for the Protection of Labour, 14.
 National Conference of State Manufacturers' Associations, 29.
 National Equipment Company, 40, 49, 62, 90.
 National Founders' Association, 19, 45.
 National Metal Trades Association, 19, 28.
 National Saddlery Manufacturers' Association, 20, 45, 46.
 National War Labor Board, 25, 26, 28.
 Nelson Fuel Company, 57, 59, 70, 88, 89.
 New England Fuel and Transportation Company, 61, 68, 70.
 New Haven Railway System, 71.
 Ohio anti-yellow dog contract bill, 32, 33, 35.
 Ohio Shoe Company, 58.
 Ohio State Federation of Labor, 32.
 Oklahoma City building trades, 29, 60, 68.
 Oliphant, Herman, 32.
 Omaha and Council Bluffs Street Railway Company, 25.
 O'Malley, Joseph, 82.
 Operators' and Cloak Makers' Union No. 1, 48.
 Pacific Electric Railway Company, 49.
 Parker, John J., 33, 36, 38.
 Parry, D. M., 20.
 Pennsylvania Railroad, 55.
 Perry, Col. Oran, 55.
 Perry, John S., 44.
 Philadelphia and Reading Railroad Company, 17.
 Pittsburg Steamship Company, 19, 73.
 Pittsburgh Coal Company, 44.
 Pleasant Valley Coal Company, 74.
 Postal Telegraph-Cable Company, 19, 74.
 Pound, Roscoe, 32.
 Pursglove Coal Mining Company, 68.
 Quemahoning Creek Coal Company, 61.
 Reading Iron Works, 44.
 Reading Railroad, 44, 48.
 Real Silk Hosiery Mills, Inc., 47, 48, 69.
 Red Jacket Consolidated Coal and Coke Company (Inc.), 75; case of (International Organization, United Mine Workers of America v. Red Jacket Consolidated Coal and Coke Co.), 30, 33, 34, 36, 49.
 Robbins, S. H., 85.
 St. Louis and San Francisco Railway Company, 23, 56.
 Sayre, Francis B., 32.
 Scott and Company, 72.
 Scott, Brant A., 51, 78, 81, 84.
 Shell-Wolfe Company, 66, 68.

- Shoe Workers' Protective Union, 37.
- Shrimpton, B. Frank, 16, 42, 76.
- Sioux City Brick and Tile Company, 62, 63.
- Springfield Foundry Company, 65.
- Stearns, Hill and Company, 16, 60, 63, 73.
- Stocking, Marjorie, 50.
- Strout, Stritter and Company, Inc., 44, 65.
- Supreme Judicial Court of Massachusetts, 35.
- Switchmen's Union, 23, 56.
- Taft, Justice, 33, 84.
- Topeka Railway Company, 73.
- Trade Press Publishing Company, 65.
- United Mine Workers, 25, 26, 27, 42, 55, 61, 68.
- United Railways & Electric Company, 51, 69, 72.
- United States Coal Commission, 31.
- United States Gypsum Plaster Company, 63.
- United States Railroad Labor Board, 35.
- United States Supreme Court, case of *Adair v. United States*, 22; case of *Coppage v. Kansas*, 23; case of *Hitchman Coal and Coke Co. v. Mitchell*, 26; interpretation of Clayton Act, 33; interpretation of federal anti-yellow dog contract bill, 37, 38, 86; nomination of Parker to, 36; rule on picketing, 84.
- United Textile Workers, 47.
- Vail-Ballou Press, Inc., 42, 74.
- Washington and Old Dominion Railway, 63, 72.
- Wasservogel, Judge, 71.
- Waterman, Senator, 36.
- West Virginia Mine Workers, 51, 78, 83.
- Western Union Telegraph Company, 16, 41, 76.
- Winding Gulf Colliery, 57.
- Youghiogeny & Ohio Coal Company, 67, 85.

VITA

Joel I. Seidman was born in Baltimore, Maryland in 1906. He was graduated from the Baltimore City College in 1923, and received the degree of Bachelor of Arts from the Johns Hopkins University in 1926. For the following two and one-half years he was a student of law at the University of Maryland. He then returned to the Johns Hopkins University to pursue graduate study in Political Economy. He received the degree of Doctor of Philosophy in 1932.

